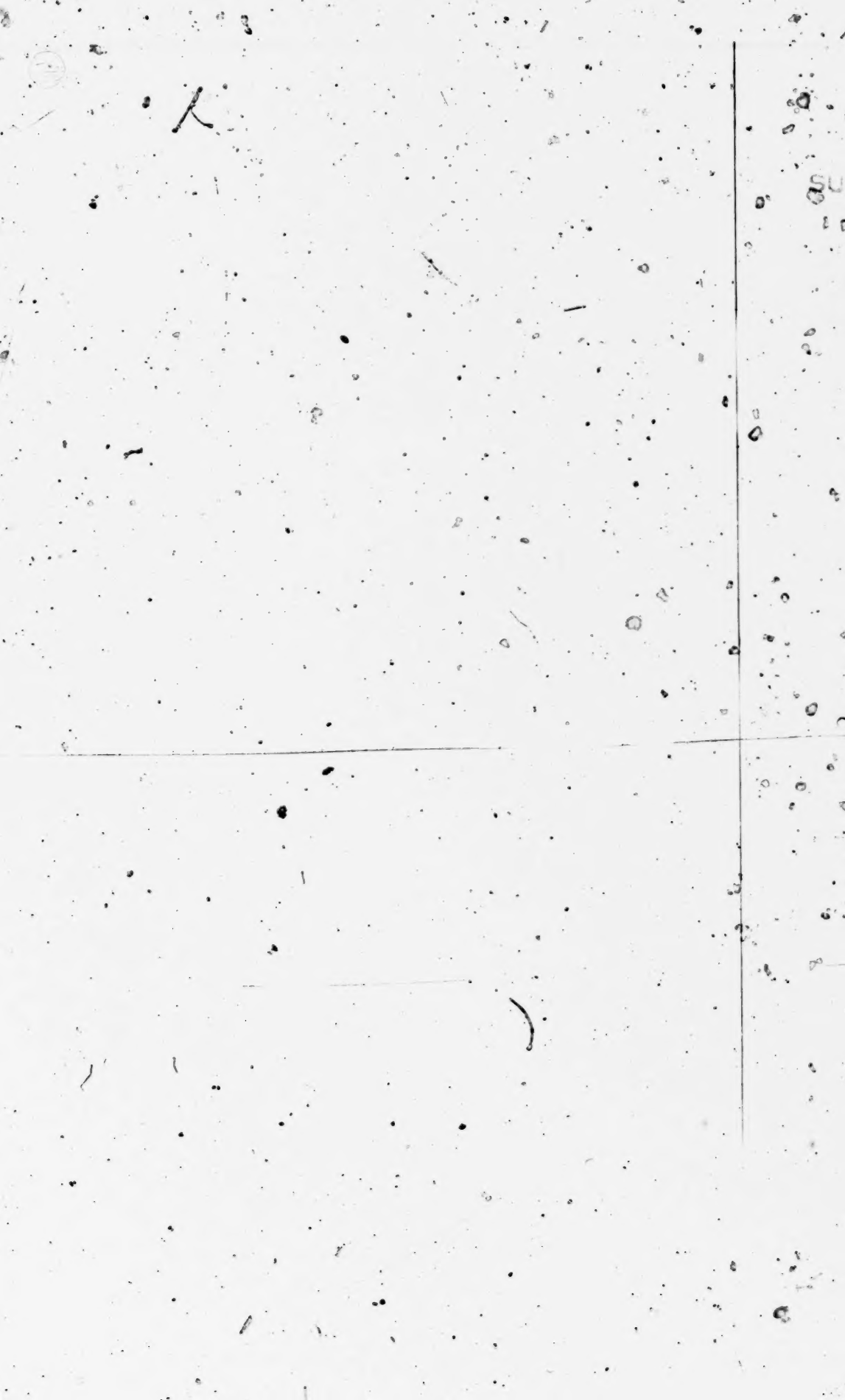

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In The

Supreme Court of the United States

October Term, 1970

No. 376

THE RAMAPO BANK, AND BROADWAY BANK AND TRUST COMPANY,

Petitioners,

vs.

COMPTROLLER OF THE CURRENCY OF THE UNITED STATES and PROSPECT PARK NATIONAL BANK,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No.

THE RAMAPO BANK, BROADWAY BANK AND TRUST COMPANY, and THE COMMISSIONER OF BANKING, STATE OF NEW JERSEY,

Petitioners,

vs.

COMPTROLLER OF THE CURRENCY OF THE UNITED STATES and PROSPECT PARK NATIONAL BANK,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Petitioners The Ramapo Bank and the Broadway Bank & Trust Company, banking corporations of the State of New Jersey, respectfully pray that a Writ of Certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Third Circuit entered on April 17, 1970.

Opinions Below

The opinion of the Court of Appeals, not yet reported, appears in the Appendix at p. 4a. The transcript of the oral opinion of the Honorable Robert Shaw in the District Court for New Jersey appears in the Appendix at p. 28a. The opinion of the Comptroller of the Currency is reproduced in the Appendix hereto at p. 67a.

Jurisdiction

The judgment of the Court of Appeals for the Third Circuit was entered on April 17, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Whether the applications of Prospect Park National Bank to relocate its main office into Wayne Township, New Jersey, and simultaneously branch back into its former main office facility constitute a branching move in violation of state branching restrictions incorporated into federal law by 12 U.S.C. §36(c)(2).

2. Whether the doctrine of "competitive equality" between state and national banks in the area of the establishment of additional banking facilities, as well as principles of sound statutory construction, require that 12 U.S.C. §30, dealing with main office relocations, be read together with and limited by 12 U.S.C. §36(c)(2), regulating branching by a national bank.

Statutory Provisions Involved

The relevant provisions of the National Bank Act, 12 U.S.C. §30, "Change of name or location," and 12 U.S.C. §36, "Branch banks," are set forth in the Appendix, *infra*, p. 84a. The applicable provisions of the New Jersey Banking Act of 1948, as amended, are set forth in the Appendix, *infra*, p. 90a.

Statement of the Case

Prospect Park National Bank, chartered in 1925 to do business in Prospect Park, New Jersey, filed simultaneous applications with the Comptroller of the Currency of the United States to relocate its main office pursuant to 12 U.S.C. §30 to Wayne Township, New Jersey, and to establish a branch office at the location of its existing main office in Prospect Park pursuant to 12 U.S.C. §36(c)(2). At the time the applications were filed Prospect Park National Bank did not have a banking office in Wayne Township.

Petitioner The Ramapo Bank, one of three banks which objected to the applications, is a state chartered commercial bank with its principal office located in Wayne Township, New Jersey. The objecting banks were joined in their objection by the Commissioner of Banking and Insurance of the State of New Jersey.[1]

---

1. The Department of Banking and Insurance of the State of New Jersey has since been reorganized into a Department of Banking and a Department of Insurance. The present Commissioner of Banking of the State of New Jersey has indicated that he is filing a separate petition seeking a writ of certiorari in this matter.

Under applicable New Jersey law The Ramapo Bank is entitled to principal office protection in Wayne Township; that is, no other state, and consequently no national bank can branch into Wayne Township. (N.J.S.A. 17:9A-19, U.S.C. §36(c)(2), Appendix pp. 87a, 90a.) In addition, there is no provision in the New Jersey Banking Act which would permit a state bank to relocate its principal office into a new municipality where it does not have an existing branch.

At the request of the objectors, an informal hearing was conducted by the Regional Administrator of National Banks. The objecting banks and the New Jersey Commissioner of Banking and Insurance appeared and raised the legal issue that the proposed move was barred by state and federal law. The objecting banks also put in issue the *bona fides* of the proposed move, the motivation for the move, and the good faith of the Comptroller's office in the conduct of the hearing. The hearing panel precluded exploration at the hearing of the issue of branching motivation, and bias and prejudice of the Comptroller's office.

The Comptroller granted both applications. In so doing the Comptroller found that his authority to grant a main office relocation was not limited by "...city boundaries, by state boundaries, by state law, or by any other factor." (Opinion of the Comptroller, Appendix at p. 80a.)

Having found the main office move into Wayne Township to be *bona fide* under his criteria and not limited by state law, the Comptroller then separately considered the branch back into the former main office and found this to be authorized by

federal and state law.

Petitioners thereafter instituted suit in the United States District Court for New Jersey seeking declaratory relief, 28 U.S.C. §2201, and further seeking temporary and permanent relief enjoining the Comptroller from issuing a certificate of authority for Prospect Park National Bank to move its main office to Wayne Township, New Jersey, and enjoining Prospect Park National Bank from making such a move.

Petitioners sought a trial *de novo* in the District Court in order to explore the issues of *bona fides* of the home office move, as well as the motivation for the move. The Honorable Robert Shaw, Judge United States District Court, denied Petitioners the right to take depositions or to produce any evidence and granted a Summary Judgment in favor of the Comptroller and Prospect Park National Bank.

In so doing, Judge Shaw recognized the following:

> First, it is agreed that N.J.S.A. 17: 9A-19, neither before or after its recent amendment, would not [*sic*] permit the Prospect Park National Bank to establish a branch in Wayne, and under Title 12 U.S.C. Section 36(c) state law controls the branching of a national bank.
>
> Next, it seems generally to be assumed correctly that a State bank could not relocate as was done here to avoid the State branching laws.

> Third, it is agreed that Wayne is a growing community and banks which are not located there have motivation to devise means to get in (such as Prospect Park's plan in the present case or paying a high premium to merge with an existing Wayne bank). (Transcript, Decision Shaw, J.D.C. Appendix, pp. 38a-39a.)

Judge Shaw further held that the doctrine of "competitive equality" between state and national banks is limited to "branch banking" and could not be extended to other methods of creating new offices which were not technically branching and that viewing the two applications herein independently, the move to Wayne was not technically "branching."

The United States Court of Appeals for the Third Circuit affirmed the District Court in an opinion that refused to recognize the impact of the dual application and accepted the contention of the Comptroller that the applications, as well as the two pertinent sections of the National Bank Act, must be viewed separately.

Petitioner Ramapo Bank moved for an injunction restraining Prospect Park National Bank from opening its relocated "main office" in a temporary facility and a stay of the judgment pending the filing of this petition. By order dated May 14, 1970, the Third Circuit denied the injunction but granted the stay of the certified judgment (Appendix, p. 1a).

Reasons for Granting the Writ

1. The decision below conflicts with the decision of the Seventh Circuit Court of Appeals in *Marion National Bank of Marion v. Van Buren Bank*, 418 F.2d 121 (1969). The *Marion* case is indistinguishable from the present case on its facts or in the applicable law. It involved simultaneous applications by a national bank to relocate its main office into an area into which it could not branch and a branch back into the former main office. The Seventh Circuit Court of Appeals, however, refused to recognize form over substance, and in commenting on the contention that the two applications separately considered might be lawful, stated:

> The difficulty is, however, that the proposed maneuver is a single indissoluble process. An integral part of it is that an existing unit bank will branch. The facility which will be subordinate and, in banking parlance, the "branch," will not be new. The facility which will be new will, by a quick twist, not be a "branch," but the head office. It will be located in territory which a state bank could not lawfully enter via the establishment of a branch. 418 F.2d at 124.

The Third Circuit conceded that its decision conflicted with the holding in *Marion* by the Seventh Circuit and made no attempt to distinguish the cases. (Appendix, p. 20a).

Respondents have repeatedly attempted to distinguish the *Marion* case on the ground that the

court in that case did not find the main office relocation to be *bona fide*, while such a finding was expressly made in the present case. This assertion ignores the thrust of the *Marion* decision, that the scheme as a whole results in a violation of the Indiana banking statute which precludes a state bank from creating a branch, ". . . by moving its head office to a city where banks are already present and continuing its existing facility as a branch." 418 F.2d at 124. Having so found, the Seventh Circuit did not have to reach the issue of the *bona fides* of the physical move of the home office.

New Jersey law, like Indiana, prohibits the creation of a new banking office in the manner undertaken in the present case.[2]

In refusing to accept a conjunctive reading of Sections 30 and 36(c) of the National Bank Act and refusing to apply the doctrine set forth by this Court in *First National Bank of Logan, Utah v. Walker Bank & Trust Co.*, 385 U.S. 252 (1966), the Third Circuit has created an irreconcilable conflict between two circuits, a conflict which, as demonstrated *infra* in Point 2, substantially affects the Comptroller's administration of national banks and strikes a crippling blow to the doctrine of competitive equality and the dual banking system.

---

2. N.J.S.A. 17:9A-22 provides that a state bank may relocate its principal office within the same municipality. N.J.S.A. 17:9A-23 authorizes a state bank to interchange its principal office and an existing branch. There is no provision of the New Jersey law which would permit principal office relocation to be utilized as an expansion tool either to gain access to areas into which branching is prohibited or to create a new office.

2. The Third Circuit characterized the issue in the present case thusly:

> The instant appeals present substantial questions concerning the authority of the United States Comptroller of the Currency to issue certificates which would permit a nationally chartered bank simultaneously to relocate its main office and to retain its former main office as a branch, when similar action on the part of state banking institutions is barred by state law (Appendix, p. 5a).

By resolving this issue in favor of granting this authority to the Comptroller of the Currency, the court has sanctioned a device capable of destroying the doctrine of "competitive equality" between state and national banks. The holding further approves a transparent maneuver expressly calculated to circumvent congressional intent as well as the holdings of this Honorable Court in *First National Bank of Logan Utah v. Walker Bank & Trust Co., supra,* and *First National Bank in Plant City v. Dickinson,* 396 U.S. 122 (1969).

That Congress intended to place state and national banks in a position of competitive equality with regard to branch banking was unequivocably established in the *Walker* case, *supra,* Mr. Justice Clark in that case made it clear that the "competitive equality" doctrine, in order to effectively accomplish its purpose, had to include not only the right to branch but the method of branching as well.

In a continuing effort to secure a competitive advantage for national banks, the Comptroller of the Currency next assaulted this doctrine by

attempting to restrict his definition of what constituted a branch in order thereby to avoid state branching law restrictions. This Court refused to accept form over substance and held that an armored car service and a deposit receptacle constituted "branches" within the meaning of 12 U.S.C. §36(f) and were thereby prohibited in a non-branching state. *First National Bank in Plant City v. Dickinson, supra.*

The Comptroller has once again redirected his efforts and conceived a method through the concurrent use of 12 U.S.C. §§ 30 and 36, whereby a national bank can obtain a new banking office — retain its former banking office, and by a tortured, formalistic approach conclude that it is not "branching" and thereby not limited by state branching law restrictions.

Of the 35 states which permit some form of branch banking, 23 have done so subject to certain restrictions and limitations.[3] These restrictions

3. ALA. CODE tit. 5, §§125, 125(1) (1960); CONN. GEN. STAT. ANN. §36-59 (1969); GA. CODE ANN. §13-203.1 (Supp. 1968); IND. STAT. ANN. §18-1707 (1964); SUPP. KY. REV. STAT. §287.180 (Supp. 1968); LA. REV. STAT. ANN. §§6:54 to 6:56, 6:244 (1951); ME. REV. STAT. ANN. tit. 9, §1003 (Supp. 1969); MASS. GEN. LAWS ch. 172, §71 (Supp. 1968); MICH. STAT. ANN. §23.762 (1957); MISS. STAT. ANN. §§5226 to 5236 (1956), as amended §5226 (Supp. 1966); N.H. REV. STAT. ANN. § 384-B:2 (1968); N.J. STAT. ANN. §17:9A-19 (Supp. 1969); N.M. STAT. ANN. §§48-2-16 to 48-2-19 (1966); N.Y. BANKING LAW §105 (Supp. 1969); OHIO REV. CODE ANN. 1111.02 to 1111.06 (1968); ORE. REV. STAT. §714.050 to 714.990 (1963); PA. STAT. ANN. tit. 7, §904 (1967); S.D. COMP. LAWS 51-8-1 to 51-8-7 (1967); TENN. CODE ANN. §45-211 (1964); UTAH CODE ANN. §7-3-6 (Supp. 1967); VA. CODE §§6.1-26 to 6.1-29.1 (1966); WASH. REV. CODE § 30.40.020 (1961); WIS. STAT. ANN. §221.04 (Supp. 1968).

and limitations take numerous different forms, such as prohibiting branching in areas where unit banks are located or where certain minimum population standards are not met. Others limit branching to the county, municipality or district in which the head office is located.[4]

By utilization of the device used in the present case, or clever variants thereof,[5] most, if not all, of these state law restrictions may be avoided.

---

4. The wisdom and logic of these various restrictions are not subjects for judicial review or within the province of the Comptroller of the Currency to modify. *See* comment by Mr. Chief Justice Burger in *First National Bank in Plant City v. Dickinson*, 396 U.S. 122, 138:

> "Here we are confronted by a systematic attempt to secure for national banks branching privileges which Florida denies to competing state banks. The utility of the armored car service and deposit receptacle are obvious; many states permit state chartered banks to use this eminently sensible mode of operations, but Florida's policy is not open to judicial review any more than is the congressional policy of 'competitive equality.' Nor is the congressional policy of competitive equality with its deference to state standards open to modification by the Comptroller of the Currency."

See also the statement by the Court in *Bank of Dearborn v. Saxon*, 244 F.Supp. 394, 398 (E.D. Mich. 1965), *aff'd*, 377 F.2d 496 (6th Cir. 1967):

> "Maybe the laws should be amended to permit the utmost flexibility in branch banking. Maybe they should not. Congressional debate on this issue has gone on for years. But it is not for defendant Saxon and defendant bank to amend our 'antiquated' laws by clever devices of evasion, covered by a broad grant of discretion and cloaked under the privilege of the executive branch of government."

5. A case currently being litigated in the United States District Court for New Jersey indicates how the concurrent use of §30 with other sections of the National Bank Act may be employed to circumvent state branching restrictions. It presents a

(Cont'd)

The resolution by this Honorable Court of the question whether the creation of an additional banking office by national banks in a location in which they are precluded from "branching" is proscribed by federal law as well as the doctrine of competitive equality is essential as it touches the very heart of the dual banking system.

In banking, largely a service business, the ability to operate at geographically separate locations is a competitive factor of overriding significance. It is the principal area singled out by Congress specifically as requiring like opportunity for state and national banks.[6]

The Comptroller of the Currency recognizes,

(Cont'd)

variant of the basic scheme utilized in the present case. National Bank A is one of several banks maintaining a main office in Hackensack, N.J. Bank A also maintains several branches in that city. It applies for and is granted a new branch in Hackensack. Immediately thereafter it files a two-part application with the Comptroller of the Currency. Part one seeks to relocate the main office from Hackensack to Paramus — a town into which it could not branch because of an existing home office bank located there. Part two of the application does not seek to branch back to its former main office facility because of the existence of the other main offices in Hackensack, but instead to "relocate" a branch into that facility. The Comptroller granted both applications with the net result that a new office is created in an area barred to branching, and business is continued at the old office with no loss of facilities. *The Midland Bank and Trust Company & Peoples Trust of New Jersey v. William Camp, Comptroller of the Currency and Hackensack Trust Company, N.A.*, U.S. Dist. Ct. N.J. Nos. 1174-69; 1199-69.

6. *See* Mr. Justice Clark's detailed examination of the legislative history of 12 U.S.C. §36 in the *Walker* bank case, 385 U.S. at pp. 256-260.

that the distinction between a "branch" and a "main office" are largely technical in nature (Appendix, p. 79a), and in no way relate to or limit the scope of services offered to the public.[7] The designation of which of several offices shall be the main office is within the control of the bank itself.

Section 36 of the McFadden Act, 12 U.S.C. §36, defines "branch" in sub-paragraph (f) as including any ". . . branch bank, branch office, branch agency, additional office. . . at which deposits are received, or checks paid or money lent." Clearly, by this definition Congress was attempting to encompass within §36, and thus limit, additional banking offices regardless of the label attached.[8]

---

7. *See* testimony of Mr. Harry Van Hook, Chairman of the Board of Directors of the Prospect Park National Bank:
"Q. Well was it understood that you would not cut down the quality or quantity of service you had previously been providing to the people in the Prospect Park office?
A. Yes, sir.
Q. And that is your feeling about what you are leaving behind in Prospect Park?
A. Yes, sir." Transcript of Hearing before Regional Administrator, p.118; Appendix below at 792a.

8. A most enlightened examination of the distinction, or lack thereof, between a main office and branch office within the context of the issue here presented was undertaken by Judge Eschbach in the U.S. District Court in Indiana in granting the permanent injunction in the *Marion* case. The decision entered April 5, 1968, N.D. Ind., Fort Wayne Civil No. 1827, set forth in full in the Appendix below, p.108a at pp. 123a-125a, provides in part:

"The Comptroller contends that since in his view the uncontradicted evidence supports a finding that The Van Buren Bank when 'relocated' into Marion will, under the

(Cont'd)

(Cont'd)

commonly accepted standards, constitute a 'main office,' nothing under either Indiana law of the National Banking Act would then prevent the Comptroller from authorizing the bank to 'branch' back into Van Buren. This argument presents a tempting and easy answer to the issues in the case at bar, but it greatly oversimplifies the situation which is presented by the facts of this case. While the physical facilities and contemplated operating characteristics of the new facility in Marion are significant, they do not require this court to blind itself to the total scope of the activities here involved, nor to disregard their historical background. It cannot be contested that there are classical and well-recognized distinctions between a 'main office' banking facility and a 'branch' banking facility. However, these conventional indicia of physical location of certain equipment and personnel should not be applied in a case where they are not appropriate. The commonly-recognized distinctions between a 'main office' and a 'branch' cannot be applied in a vacuum, but must be applied to the circumstances of the individual case in relation to the purpose for which a definition of the terms is sought.

"It is clear that the purpose of regulating the power of banks to branch is not to guarantee that certain facilities normally associated with a 'main office' will be located in one place rather than another. Regulations governing the power of banks to branch must be related to the needs and welfare of customers within a particular market for banking services. Under the circumstances of this case, it is clear that the facility in Van Buren will continue to serve the needs of a great majority of Van Buren Bank's present customers, and the proposed facility in Marion is largely a venture into a new market. Burns Ind. Stat. §18-1707 specifically declares that it is the law of Indiana not to permit an established banking institution to venture into a new market if this new market is already served by other banking institutions. And 12 U.S.C. §36(c)(2) specifically provides that if a state bank cannot do it, a national bank cannot do it either. This court cannot permit the legislative scheme to be emasculated by an arid emphasis on such terms as 'branch' and 'main office,' without regard to the legislative purpose which these terms were really intended to express. The clear preponderance of the evidence in this case is that

(Cont'd)

The Third Circuit refused to attempt to harmonize 12 U.S.C. §30 and 12 U.S.C. §36 on the basis that ". . . it is quite obvious that the sections have independent statutory scope and purpose" (Appendix, p. 22a). Yet, it was the conjuctive use of the two sections by the Comptroller that enabled him to circumvent state branching laws.

Both the District Court and the Third Circuit opinions recognized that the Comptroller of the Currency has evolved a scheme to circumvent state branching restrictions, yet conceived themselves powerless to remedy the situation.

Petitioners respectfully urge that this obvious disregard of congressional intent in an area having such a direct impact on the state of our national economy as the regulation of banking commends itself to review by this Honorable Court.

There is a great need for a degree of certainty in the law governing the establishment of new banking offices. The regulation by Congress and the legislatures of the several states of the entry into the banking field as well as the location of additional facilities is a recognition that unfettered competition is not in the public interest.

(Cont'd)

the plan which Van Buren Bank and the Comptroller characterize as a 'relocation' of the 'main office' in Marion coupled with a 'branch' into Van Buren is in fact intended as a subterfuge for what is essentially an attempt by an established bank in Van Buren, Indiana, to establish a branch in Marion. The fact that certain facilities and personnel normally associated with a main office are to be located in Marion rather than Van Buren is not a persuasive consideration in view of the purposes of the statutes involved and the facts of this case."

Examination of this issue by this Court will lend the required certainty so that both the state and national bank systems may expand in an orderly fashion.

Conclusion

For these reasons, a Writ of Certiorari should issue to review the judgment and opinion of the Third Circuit.

Respectfully submitted,

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Counsel for Petitioners, The Ramapo Bank and Broadway Bank and Trust Company

July 10, 1970

Order Staying Mandate and Denying Injunction Pending Appeal

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 18,022 and 18,117

THE RAMAPO BANK and BROADWAY BANK & TRUST COMPANY, both banking corporations of the State of N.J., and NEW JERSEY BANK (National Association) a national banking association, formerly N.J. Bank and Trust Co., a banking corp. of the State of N.J.

HORACE J. BRYANT, JR., Commissioner of the Dept. of Banking and Insurance, State of N.J., (Plaintiff Intervenor)

vs.

WILLIAM B. CAMP, Comptroller of the Currency of the United States, and PROSPECT PARK NATIONAL BANK, a national banking association

THE RAMAPO BANK and BROADWAY BANK & TRUST COMPANY,

Appellants in No. 18,022

HORACE J. BRYANT, JR., Commissioner of the Dept. of Banking and Insurance, State of N.J. (Plaintiff Intervenor),

Appellant in No. 18,117

Order Staying Mandate and Denying Injunction Pending Appeal

Present: BIGGS, KALODNER and FREEDMAN, Circuit Judges.

Upon consideration of motion by appellant Ramapo Bank for Injunction and Stay Pending Appeal, and memorandum in support thereof, and the answers in opposition thereto from appellee William B. Camp, Comptroller, and appellee Prospect Park National Bank, all in the above-entitled cases,

It is ORDERED that the motion by Ramapo Bank for an injunction pending appeal be, and hereby is denied; and

It is further ORDERED that the issuance of certified judgment in lieu of formal mandate in these cases be, and hereby is stayed for a period of sixty (60) days from the date of this order.

By the Court,

KALODNER
Circuit Judge

Dated: May 14, 1970

Judgment

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Nos. 18,022 and 18,117

(Same Title)

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Present: BIGGS, KALODNER and FREEDMAN, Circuit Judges

Judgment

These causes came on to be heard on the record from the United States District Court for the District of New Jersey and were argued by counsel.

On consideration whereof, it is now here ordered and adjudged by this Court that the judgment of the said District Court, filed May 20, 1969, be, and the same is hereby affirmed, with costs taxed in favor of appellees.

ATTEST:

THOMAS F. QUINN,

Clerk

April 17, 1970

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 18022 and 18117

THE RAMAPO BANK AND BROADWAY BANK & TRUST COMPANY, BOTH BANKING CORPORATIONS OF THE STATE OF N.J., AND NEW JERSEY BANK (NATIONAL ASSOCIATION), A NATIONAL BANKING ASSOCIATION, FORMERLY N.J. BANK AND TRUST CO., A BANKING CORP. OF THE STATE OF N.J.

HORACE J. BRYANT, JR., COMMISSIONER OF THE DEPARTMENT OF BANKING AND INSURANCE, STATE OF N.J. (PLAINTIFF INTERVENOR)

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, AND PROSPECT PARK NATIONAL BANK, A NATIONAL BANKING ASSOCIATION

THE RAMAPO BANK AND BROADWAY BANK & TRUST COMPANY,
Appellants in 18022

HORACE J. BRYANT, JR., COMMISSIONER OF THE DEPARTMENT OF BANKING AND INSURANCE, STATE OF NEW JERSEY (PLAINTIFF INTERVENOR),
Appellant in 18117

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Argued September 19, 1969

Before BIGGS, KALODNER and FREEDMAN, *Circuit Judges*

OPINION OF THE COURT

(Filed April 17, 1970)

By KALODNER, *Circuit Judge*

The instant appeals present substantial questions concerning the authority of the United States Comptroller of the Currency to issue certificates which would permit a nationally chartered bank simultaneously to relocate its main office and to retain its former main office as a branch, when similar action on the part of state banking institutions is barred by state law. At issue principally is the scope and application of Sections 30 and 36(c)(2) of the National Bank Act.[1]

Appellants are the Ramapo Bank and the Broadway Bank & Trust Company, both banking corporations of the State of New Jersey, and the New Jersey Commissioner of Banking and Insurance.[2] Defendants are William B. Camp, Comptroller of the Currency of the United States, and the Prospect Park National Bank ("PPNB") a national banking association chartered in 1925 to conduct business in Prospect Park, New Jersey.

On May 17, 1968, PPNB applied to the Administrator of National Banks for permission to relocate its main office from Prospect Park to a site in the adjoining township of Wayne, New Jersey, a distance of 2.7 miles. The application and supporting documents stated that the relocation was necessary to relieve the overcrowded condition in the existing main office; to service customers who were moving away from Prospect Park to nearby suburban areas such as Wayne; and to move the bank from an area of declining population and economy into a rapidly developing com-

1 24 Stat. 19 (May 1, 1886), as amended, 12 U.S.C. § 30 (1964); 44 Stat. 1228 (Feb. 25, 1927), as amended, 12 U.S.C. § 36 (1964).

2 The Commissioner was granted the right to intervene as a plaintiff in the District Court, and as an apellant in the instant appeal. The Commissioner's appeal (No. 18117) has been consolidated with that of the appellant banks (No. 18022). Also a plaintiff below was the New Jersey Bank, formerly New Jersey Bank & Trust Company, which converted to a national banking association on April 4, 1969. It is not a party to this appeal.

munity. The main office relocation was approved by a vote of 99 per cent of the PPNB shareholders.

PPNB is the only bank with offices in Prospect Park, a small, highly urbanized borough on the border of Paterson, New Jersey.[3] Wayne Township, in contrast, is a large suburban community in which over one-third of the land is available for development. While the population of Prospect Park has remained constant at about 5,200 since 1930, the population of Wayne has grown from 11,822 in 1950 to an estimated 47,000 in 1968. Wayne Township is currently served by six banking offices: the main office and branch of the appellant Ramapo Bank,[4] two branch offices of the New Jersey Bank, and two branches of the First National Bank of Passiac County.

PPNB's main office application was filed pursuant to 12 U.S.C. Section 30,[5] which provides that a national bank may, with the approval of the Comptroller of the Currency and two-thirds of its shareholders, move its main office to any location outside of the municipality in which it is presently situated, but not more than 30 miles distant.[5] There is nothing in the language of Section 30 to indicate that the propriety of the relocation is made subject to state law.

In a separate but simultaneous application, filed pursuant to 12 U.S.C. Section 36(c)(2), PPNB sought approval for the retention of its former main office in Prospect Park

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3 PPNB maintains a branch office in Hawthorne, New Jersey. The branch office is not involved in this suit.

4 The Ramapo Bank opened for business in Wayne on June 15, 1967, and had total assets of approximately $36 million at year-end 1967. It currently has assets in excess of $10 million. In August 1967, two months after its main office was opened, the Ramapo Bank applied to the New Jersey Commissioner for permission to establish a branch at a location less than one mile from PPNB's planned relocation site. The branch application was approved in March 1969, and the branch was opened in May 1969.

5 Section 30 provides in pertinent part:

". . . Any national banking association, with the approval of the Comptroller of the Currency, may change the location of the main office of such association to any other location outside the limits of the city, town, or village in which it is located, but not more than thirty miles distant, by the vote of the shareholders owning two-thirds of the stock of such association. * * *"

as a branch. In support of its branch application, PPNB noted the substantial number of its customers who would continue to require banking facilities in Prospect Park.

Section 36(c)(2) also requires the approval of the Comptroller for the creation of a branch of a national bank, but additionally provides that the statute law of the particular state must specifically and affirmatively grant such authority to state banks.[6]

The State of New Jersey does not permit the establishment of *branch offices* by state banks in any municipality, other than that in which the main office is situated, if another banking institution has its principal office located there. N.J.S.A. 17:9A-19(B)(3).[7] Further, a state banking institution in New Jersey may not change the location of its *principal office* outside of the municipality in which it is situated. N.J.S.A. 17:9A-22, 23.[8] Thus, by virtue of the

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6 Section 36(c)(2) provides the following:

"(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: * * * (2) at any point within the State in which said association is situated, *if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks.* * * *" (emphasis supplied).

7 N.J.S.A. 17:9A-19(B)(3) contains the following language:

"(B) No bank or savings bank shall establish or maintain a branch office which is located outside the municipality in which it maintains its principal office; except that a bank or savings bank may establish and maintain a branch office or offices anywhere in the same banking district as that in which it maintains its principal office:

* * *

"(3) when each proposed branch will be established in a municipality in which no banking institution has its principal office or a branch office; except that, when a municipality has a population of 7,500 or more, and no banking institution has its principal office therein, a bank or savings bank may establish and maintain a branch office or offices in such municipality notwithstanding the presence therein of one or more branch offices of one or more banking institutions."

New Jersey's recent consolidation of "banking districts" does not affect the instant case. See N.J.S.A. 17:9A-19(F), L. 1968, c. 415.

8 The relevant provisions of N.J.S.A. 17:9A-22 and 23 are as follows:

"Section 22. Change of principal or branch office; application; approval

"A. A bank or savings bank may change the location of its principal office or of a branch office to a location within the same municipality in which such principal office or such branch office is located on filing an application therefor in the department and obtaining the approval of the commissioner.

fact that the Ramapo Bank has its main office located in Wayne Township, it is clear that no other bank may establish a *new* branch office in Wayne.[9] It is equally clear that, if PPNB's main office were legally relocated in Wayne, PPNB could lawfully establish a branch in Prospect Park, since there is no other bank currently conducting business there. This, in essence, is what PPNB claims to have done by means of its concurrent applications; that is, lawfully relocate in Wayne pursuant to Section 30, and then establish a branch in Prospect Park pursuant to Section 36(c)(2) and applicable New Jersey branching law.

When PPNB's applications were brought to the attention of the New Jersey Commissioner and competing national and state banks, opposition was immediately voiced. In separate letters to the Comptroller dated June 3, 1968,

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8 (cont'd)

"B. If it shall appear from the application, or if the commissioner shall find from such proof as he may require, or from such investigation as he may cause to be made, that the area which would be served by such office after its change in location would not be substantially different from the area theretofore served by such office, he shall approve the application.

"C. If it shall appear to the commissioner, from the application, or from such proof as he may require, or from such investigation as he may cause to be made, that the proposed location will be so far removed from the place then occupied by such principal office or by such branch office that the area which would be served by such office after its change in location would be substantially different from the area theretofore served by it, he shall not approve such application unless, after such investigation or hearing, or both, as the commissioner may determine to be advisable, he shall find that the interests of the public will be served to advantage by such change in location, and that conditions in the locality to which the removal is proposed afford reasonable promise of successful operation.

"D. No bank shall change the location of its principal office pursuant to subsection C of this section unless, following the approval of the commissioner, it shall amend its certificate of incorporation to effect such change."

"Section 23. Interchange of principal and branch offices

"A bank or savings bank may, without satisfying the requirements of Section 22 [17:9A-22], change the location of its principal office to a location then occupied by a branch office maintained by it. After such a change, the bank or savings bank may maintain a branch office at the location formerly occupied by its principal office, or it may discontinue business at such location. Such a bank or savings bank shall file a certificate of such change in the department within one week from the date such change is made. A change in location effected pursuant to this section shall not be subject to the limitations imposed by subsection C or D of section 19 [17:9A-19]."

9 It should be said that a bank may establish a branch in Wayne through merger. Both the New Jersey Bank and the First National Bank of Passaic County gained entry into Wayne by merger with existing institutions.

the Ramapo Bank and the Commissioner set forth their belief that the planned main office relocation was in direct violation of New Jersey and federal banking statutes. Two other banks, the New Jersey Bank and the appellant Broadway Bank & Trust Company,[10] subsequently joined in the Notice of Opposition filed by the Ramapo Bank.

At the request of the protesting banks, the Comptroller's Regional Office conducted an informal hearing on August 20, 1968. Thereafter, both the Regional Administrator of National Banks and the National Bank Examiner assigned to investigate the applications, recommended that the applications be approved.[11]

On April 8, 1969, following his independent examination of the record, the Comptroller issued an Opinion in which he separately approved each of the PPNB applications. In so doing, the Comptroller found:

> "* * * that the proposed relocation of the main office of Prospect Park National Bank is in all ways *bona fide;* that it is a prudent and necessary step to enable the applicant bank to continue serving both its shareholders and its depositors; that it will serve the public interest by establishing a banking office in Wayne Township where additional banking facilities are needed; that existing banks in the area will not be adversely affected; * * *."[12]

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10 Broadway Bank & Trust Company is a state bank located in Paterson, New Jersey. It has no offices in Wayne. An additional protest, filed by the People's Trust Company of Bergen County, was withdrawn on July 26, 1968.

11 Neither recommendation considered the legal challenge pressed by the protestant banks and the New Jersey Commissioner. The National Bank Examiner's Report regarding the proposed main office move recommended the application "be approved, providing current laws entitle [PPNB] to do so." Report of Investigation of Anthony Petrshin, Jr., June 20-21, 1969. Similarly, in a letter to counsel for the Ramapo Bank dated September 19, 1968, the Deputy Comptroller of the Currency indicated his unwillingness to take up the question of the legality of the PPNB applications at that time.

12 "Opinion of the Comptroller of the Currency on the Applications of the Prospect Park National Bank for Permission to Change the Location of Its Main Office from 124 Haledon Avenue, Prospect Park, New Jersey, to Hamburg Turnpike and Duncan Lane, Wayne, New Jersey, and to Retain Its Former Main Office as a Branch", dated April 8, 1969, p. 6. Hereinafter "Opinion of the Comptroller."

The Comptroller further determined that the applications fully comported with the requirements of Section 30 and 36(c)(2).

The following day, April 9, 1969, the protesting banks [13] commenced the instant declaratory judgment action in the United States District Court for the District of New Jersey, seeking preliminary and permanent injunctive relief enjoining the Comptroller from issuing a certificate of authority for PPNB to move its main office to Wayne, and enjoining PPNB from moving its main office.

In addition to alleging inadequacy of the Regional Director's hearing, the Complaint, alleges that PPNB's applications are not authorized under 12 U.S.C. §§ 30 and 36(c) "since it does not intend in fact to relocate its 'main office'"; and "its operation in Wayne is intended to and will operate as a branch"; PPNB's applications "are a subterfuge intended to circumvent the requirements" of Section 36(c) "which requires that any branches to be established must be authorized by State law."; and "the applicable New Jersey law (17 N.J.S.A. 9A-22-23) would not permit" PPNB "to change the location of its principal or main office if it were a bank chartered under New Jersey law." The Complaint further alleges that "the doctrine of competitive equality between national and state banks" bars approval of PPNB's applications.[14]

The District Court denied the requested temporary relief. Thereafter, the plaintiff banks moved for the right to take depositions. The motion was opposed by the defendants, who moved to dismiss the action or, alternatively, for summary judgment. All motions were set down for hearing on May 19, 1969. The District Court, at the conclusion of the arguments, delivered an oral Opinion in which it sustained the approvals given by the Comptroller. In doing so it stated its function was limited to determining

13 The New Jersey Commissioner of Banking and Insurance was granted permission to intervene on May 9, 1969.

14 Complaint filed in the United States District Court for the District of New Jersey, at Civil Action No. 423-69, dated April 9, 1969.

whether the Comptroller's action was "arbitrary and capricious, unwarranted in law and in fact." [15]

Following a detailed review of the administrative record, the District Court found that there was "no evidence which would support a conclusion that the proposed relocation of the main office of the Prospect Park National Bank is nothing but a mere subterfuge, and that, in fact, what is being called the main office is actually a branch." [16]

Concerning the statutory issue raised, it said:

> "It is my opinion that Title 12 U.S. Code, Section 30, is the controlling statute with respect to the establishment of a main office by a national bank. It is my further opinion that when Congress enacted Title 12 U.S. Code Section 36(c) it did not intend any of the provisions of that Section to be incorporated in Section 30, either by implication or otherwise. In fact, I have reached the conclusion that a short answer to the argument that Section 30 cannot be applied without consideration of the provisions of Section 36(c) is that if Congress so intended it would have expressly stated that to be the fact." [17]

The District Court concluded that the hearing held, and the entire administrative proceedings, were more than adequate to afford plaintiffs due process of law, and that, consequently, a judicial trial *de novo* was not required.[18] Defendants' motion for summary judgment was accordingly granted and the Complaint dismissed.[19]

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15 Unreported Opinion of Shaw, J., Civil Action No. 423-69, D.N.J. May 19, 1969, p. 28.

16 *Id.*, p. 27.

17 *Id.*, p. 18.

18 *Id.*, p. 28.

19 Order of Shaw, J., Civil Action No. 423-69, D.N.J., May 20, 1969. Judge Shaw further denied plaintiffs' application for stay pending appeal. Unreported Opinion of Shaw, J., *op. cit.*, pp. 37-39. A motion for stay pending appeal, filed in this Court on July 9, 1969, was denied in an Order dated July 15, 1969. We have been advised by counsel for PPNB that the bank has proceeded with its plans, and will commence operations in Wayne in a temporary facility before the end of 1969.

On this appeal, appellants claim that the District Court erred in its construction and application of Sections 30 and 36(c)(2). They contend that the simultaneous applications of PPNB are unlawful for these separate reasons: (1) the applications constitute a subterfuge for what is in reality a branching move prohibited by New Jersey statute, and therefore violate the express provisions of Section 36(c)(2); (2) the doctrine of "competitive equality", as well as recognized principles of statutory construction, require that Section 30, relating to national bank main offices, be read together with and limited by Section 36(c)(2), relating to national branch banks. Additionally, the lower court is said to have erred when it refused to conduct a trial *de novo*, which is mandated in this case, applicants assert, by the Administrative Procedure Act and the Due Process Clause of the Fifth Amendment to the United States Constitution.[20]

We turn first to the question of the *bona fides* of the PPNB main office relocation, and the correlative issue of the applicability of Section 36(c)(2) branching restrictions.

In essence, appellants' first contention is that through the device of concurrent main office and branch applications, PPNB intends to obtain in "substance" that which New Jersey and federal branch banking statutes manifestly prohibit it from obtaining in "form:" a branch office in Wayne Township. It is further asserted that the Comptroller of the Currency, "through a formalistic approach totally ignoring substance," has participated in a "subterfuge" to circumvent applicable branching laws. Appellants assert that "in economic banking reality" the planned Wayne facility (the "main office") is a venture into a new municipality and new market area in search of new accounts, indicia common to a new branch, while the 45 year-old Prospect Park office (the "branch") continues to exist and

20. In addition, appellants contend that the District Court erred when it ruled that the "motivation" behind PPNB's relocation and branch retention was irrelevant to the issue of the *bona fides* of the applications, and when it found that the Comptroller's decision was supported by substantial evidence. These contentions are disposed of in our disposition.

continues to render the same services to the bulk of the bank's existing customers.

It is clear that if branching considerations were to apply in the instant case, New Jersey branching laws would govern and would preclude the proposed move to Wayne.[21] However, we are of the opinion that the Comptroller properly found that PPNB intends a *bona fide* move of its *main office* to Wayne, and we therefore conclude that Section 36 (c)(2) has no applicability to the relocation here involved.

We note initially, and appellants apparently concede, that the evidence before the Comptroller affirmatively established that PPNB has complied with all of the Section 30 requirements relating to the relocation of a main office by a national bank.[22] Section 30 conditions the relocation on the granting of approval by the Comptroller. Courts have, in the main, consistently recognized the wide area of discretion delegated by Congress to the Comptroller in the complex field of national banking, and have sustained the exercise of this discretion save in those cases in which it is determined that the action taken was arbitrary, capricious, or contrary to law. See Federal Home Loan Bank Board v. Rowe, 284 F.2d 274, 278 (D.C. Cir. 1960);[23] Warren Bank v. Saxon, 263 F. Supp. 34, 36-38 (E.D. Mich. 1966), aff'd,

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21 The United States Supreme Court recently reaffirmed the principle that: "One such condition [under which national banks may establish branches] is that a 'branch' may be established only when, where and how state law would authorize a state bank to establish and operate such a branch, 12 U.S.C. § 36(c). First National Bank of Logan, Utah v. Walker Bank & Trust Company, 385 U.S. 252 (1966)." First National Bank in Plant City, Florida v. Dickinson, 396 U.S. 122, 130 (1969). Footnote omitted. We noted earlier that New Jersey branching laws would not permit PPNB to establish a *branch* bank in Wayne in the context of this case. See, *supra*, n. 7.

22 As stated above, Section 30, the provision of the National Bank Act governing main office relocations, requires that the relocated office (1) be within 30 miles of the former main office, (2) that it be approved by a two-thirds vote of the shareholders, and (3) that it have the approval of the Comptroller of the Currency. See, *supra*, n. 5.

23 In *Rowe*, the Court stated:

"An examination of congressional legislation with regard to banking since 1864 shows that Congress has consistently used various forms of the word 'approve' in the sense of conferring discretion upon the Comptroller of the Currency, the Secretary of the Treasury, or the Federal Reserve Board." 284 F.2d, at 278.

396 F.2d 52 (6 Cir. 1968). Cf., Davis, 1 Administrative Law Treatise, § 4.04 (1965 Supp.).

The Comptroller, after a review of the extensive administrative record, specifically found that the Wayne relocation was *bona fide*, and in accordance with law. The Comptroller noted:

> "The distinctions between a main office and a branch office are bottomed primarily on various sections of the National Bank Act and include that a national bank has but one capital structure authorized to its main office, regardless of the number of branches; that no branch of a national bank has a board of directors; that residency requirements are imposed on the directors of a national bank in relation to the main office without regard to the location of branches; that the lending limitations of a national bank are based on the capital structure of a main office without regard to the number of branches; that no branch of a national bank has separate shareholders; that a branch may be closed at any time by a bank's board of directors without approval of either the shareholders or the Comptroller; and that a main office may be closed only by liquidation, merger, or receivership, all of which are complicated processes requiring approval of the bank's shareholders and/or authorization from the Comptroller. Protestants do not contest that the office which the Prospect Park National Bank proposes to establish in Wayne will be a *bona fide* main office under each of these criteria."[24]

The foregoing distinctions have normally been applied by courts faced with the problem of differentiating between a "main office" and a "branch." See, e.g., Camden Trust Company v. Gidney, 301 F.2d 521, 524-525 (D.C. Cir. 1962), *cert. den.*, 369 U.S. 886. The Comptroller found that each of these distinguishing characteristics was present in the relocated main office proposed by PPNB.

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24 Opinion of Comptroller, *supra*, p. 8.

Moreover, prevailing economic conditions in Prospect Park, as determined by the National Bank Examiner, the Regional Administrator, and the Comptroller, supported the relocation. It was the Comptroller's conclusion, which the District Court found amply supported by the record, that:

> "The applicant bank must expand and improve its physical facilities. The bank's employees and its customers are intolerably crowded, as demonstrated in the photographs the bank submitted. The applicant has received plans for enlarging and remodeling its present facilities, but such plans are extremely costly. The bank believes, and the Comptroller agrees, that the bank would not be justified in spending a substantial sum of money to enlarge its present building or to build a new building at its present location which is in a declining area."[25]

Having no place in which to expand in Prospect Park, the Comptroller considered it "only prudent" for PPNB to select a site which would permit future expansion and growth. The unchallenged evidence is that Wayne Township offers these opportunities. The history of Section 30 indicates congressional recognition that relocation applications "must naturally come from those parts of the country where population is rapidly changing or business is rapidly developing." 17 Cong. Rec. 1350 (1886).

In urging that "economic banking realities" demonstrate that the Comptroller's decision was without basis in fact, appellants rely on the fact that initially only seventeen million dollars of the ninety-two million dollars in deposits currently held in the Prospect Park office will be transferred to the Wayne facility. This, it is said, clearly proves the

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25 *Id.*, p. 2.

continued primacy of the Prospect Park office.[26] Further, appellants contend that the "service area" of the Prospect Park office is, and will continue to be, many times greater than the projected service area of the Wayne office, again indicating, they assert, that the Prospect Park office will remain, in fact if not in name, the true "main office."

In his Opinion, the Comptroller characterizes these contentions as legally and factually "frivolous."

> "First, the power of a national bank to relocate with the Comptroller's approval its main office pursuant to 12 U.S.C. § 30 is in no way circumscribed by a requirement that a particular number of accounts be transferred. Second, there is no way to distinguish the main office of a bank from its branches by the number, size, or percentage of deposit accounts, or the addresses of the depositors. If plaintiffs contentions were accepted, the present main office of Prospect Park could not be its main office because only 4.2 percent of its deposit accounts belong to customers with Prospect Park addresses. Finally, even if the protestants' theory were acceptable, the record in this case shows that the Prospect Park National Bank already has more deposits generated from Wayne than from Prospect Park."[27]

As we will later develop, we find nothing in the language or history of Section 30 which requires the Comptroller to find that the bulk of customer accounts will be relocated with the main office before he is able to grant approval.

We find equally without substance appellants' contention that the Comptroller and PTNB jointly engaged in a

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26 Support for this position is said to come from Bank of Dearborn v. Saxon, 244 F. Supp. 394 (E.D. Mich. 1965), *aff'd*, 377 F.2d 496 (6 Cir. 1967). The District Court there said that a *branch office* "move" included, as a minimum, "taking the bulk of the customer's accounts along." 244 F. Supp., at 397. No authority for this principle is cited by the *Dearborn* Court, and there is nothing contained in either Section 30 or 36 to require that such a finding be made as a matter of law.

27 Opinion of the Comptroller, *supra*, pp. 7-8.

subterfuge to evade state branching laws. Indeed, both the actions and intentions of the defendants were quite open and apparent.[28] A similar charge of subterfuge was leveled against the Comptroller and a national bank in Merchants and Miners Bank v. Saxon.[29] There, First National Bank of Lake Linden applied to the Comptroller for permission to relocate its main office to Calumet, Michigan, and to retain its former main office in Lake Linden as a branch. Michigan law regarding the establishment of branches is substantially the same as that of New Jersey, insofar as it forbids the creation of branches in communities in which another bank is already located. In dismissing the action brought by a Calumet state bank to enjoin Comptroller approval Chief Judge Kent stated:

> "Counsel for the plaintiff alleges that this is a package deal, and quite obviously that is true. The defendant bank has a semi-successful operation going in Lake Linden. It is recognized that, economically, Lake Linden is going out of existence as a commercial community. * * *
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> "The defendant bank, recognizing the existence of that situation, proposes to move the scene of its principal operations from Lake Linden to Calumet; but, also recognizing that it has not only a duty to its depositors and people with whom it does business, but a duty to its shareholders to maintain a profitable operation which is presently operating, and which might be in part, at least, used to absorb some of the necessary expense and problems of expansion in the new area, has formed, as part of the package, a proposal to continue a branch in Lake Linden.

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28 In claiming that there is evidence of collusion between the Comptroller and PPNB, appellants point to several "*ex parte* communications" PPNB allegedly engaged in with members of the Comptroller's Regional Office. Commenting on this charge, Judge Shaw noted that while "there may be impropriety in this type of approach to a public agency," if the communications did in fact occur, such practice was customary between individuals and agencies in the area of regulated industries.

29 Unreported Opinion of Kent, C.J., No. 1042, W.D. Mich., N.D., July 13, 1966.

"I suggest, for the purpose of the record, that any banker with the facts pending as presented to the comptroller, would deem it the height of folly to move the defendant bank to Calumet and close the Lake Linden facility.

"There is nothing in this record to establish that the defendant bank intends any portion of its applications to constitute a sham or subterfuge or fraud upon the comptroller; and certainly, as conceded by plaintiff's counsel, the comptroller has been guilty of no fraud or subterfuge, and there is no reason to charge fraud or subterfuge or any sham on the part of the comptroller. Therefore, unless otherwise prevented, the decision of the comptroller is not contrary to law."[30]

The *Merchants* case is on all fours with the case before us, and Chief Judge Kent's conclusions are equally applicable to the instant case.

It was conceded by plaintiff in *Merchants* that unless it could be shown that the concurrent applications were a sham or a subterfuge, or a fraud on the Comptroller, the Section 30 provisions were controlling on the question of whether a national bank could relocate its main office. The question of the scope of Section 30 in simultaneous main office relocation and branch retention cases had earlier been raised in the same District Court in Traverse City State Bank v. Empire National Bank, 228 F. Supp. 984 (W.D. Mich. 1964). In *Traverse*, the defendant Empire National Bank sought to (1) become a national bank and change its name, (2) relocate its main office from the Village of Empire to Traverse City, Michigan, and (3) retain its existing Empire main office as a branch. Two Traverse City banks protested the applications, asserting that the relocation of

30 Opinion of Kent, C.J., *supra*, pp. 8-10. See also, Camden Trust Company v. Gidney, 301 F.2d 521, 523 (D.C. Cir. 1962), *cert. den.*, 369 U.S. 886. We note that appellants in the instant case do charge fraud on the part of the Comptroller. We find this allegation wholly without substance. As Judge Shaw found in the court below, everything done by defendants was as open and obvious as was practically possible. Opinion of Shaw, J., *supra*, p. 2.

Empire National Bank's main office into Traverse City was precluded by an earlier state court ruling that there was no "necessity" for the creation of a new banking facility in Traverse City, a prerequisite for the establishment of a *new branch* pursuant to Michigan law. In holding the Comptroller's approval proper as a matter of law, the District Court there stated:

> "Title 12 U.S.C.A. § 30 does not oblige the Comptroller to first find 'necessity' before he approves relocation of a nation banking association's main office. The statute is silent on the finding of 'necessity' as a condition precedent to his approval of a national bank's main office move.
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> "The language of the statute makes the move dependent only upon 'approval' by the Comptroller and a vote of two-thirds of the shareholders of the national bank." 228 F. Supp., at 990.

The Court concluded:

> "It was apparently the intent of Congress *not* to limit the relocation of main offices of national banking associations by reference to state banking laws, since there is no such limitation. 12 U.S.C.A. § 30.
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> "If we were to hold, as plaintiffs urge us to do, we would write into Section 30 of the National Banking Act that which Congress decided not to include in the Act. This court would thus be legislating and usurping the powers of Congress." 228 F. Supp. at 992. (emphasis in the original.)

We agree with the holding in *Traverse* that Section 30 controls with respect to an application for a national bank's main office relocation [31] free of the impact of state banking

31 Appellants concede that if the relocation of PPNB's main office is lawful, there is no legal impediment to PPNB's retaining, or creating, a branch office in Prospect Park.

laws or policy, and that administrative approval of such an application must be sustained if it is not arbitrary, capricious or an abuse of discretion, and it is supported by substantial evidence.[32] It is certainly not within our province to pass upon the wisdom or desirability of Section 30. That Congress has the power to exempt national banks from state regulation is unquestioned. See McCulloch v. Maryland, 17 U.S. (4 Wheat.) 316 (1819); First Agricultural National Bank of Berkshire v. State Tax Commission, 392 U.S. 339 (1968). That Congress has done so with regard to the relocation of the main offices of nationally chartered banks is equally certain, both from the lack of express language to the contrary in Section 30, and the absence of contrary suggestion in the congressional history of the National Bank Act, or Section 30 in particular.

We are aware that a contrary result was recently reached by the Seventh Circuit in Marion National Bank of Marion v. The Van Buren Bank, 418 F. 2d 121 (7 Cir., 1969). There the Court held there must be a conjunctive reading of Sections 30 and 36(c) with respect to an application for relocation of a national bank's main office and the conversion of its existing main office into a branch office in light of First National Bank of Logan, Utah v. Walker Bank & Trust Company, 385 U.S. 252 (1966). In our view, *Walker Bank* is inapposite. That case concerned only the issue of the extent to which aspects of state branching regulations were meant to apply to the creation of branches by national banks pursuant to Section 36(c). Section 30 was not before the Court nor even mentioned in its Opinion.

In support of their contention that the *bona fides* of a main office relocation, when joined with a branch retention, must be measured against state branching laws and policy, appellants have cited First National Bank in Plant City v. Dickinson, 396 U.S. 122 (1969); Bank of Dearborn v. Saxon, 244 F. Supp. 394 (E.D. Mich. 1965), aff'd, 377 F.2d 496

32 See Community National Bank of Pontiac v. Saxon, 310 F.2d 224, 226 (6 Cir. 1962): "the decisions of executive officers on questions of fact are conclusive if reasonably supported by substantial evidence."

(6 Cir. 1967); and Whitney National Bank v. Bank of New Orleans & Trust Company, 323 F.2d 290 (D.C. Cir. 1963), *rev'd on other grounds*, 379 U.S. 411 (1965). These cases are inapposite in that each concerns some aspect of the branch banking statute, Section 36, and none deal with or refer to the main office provisions of Section 30. Additionally, each is clearly distinguishable on its facts.

Thus, we are of the opinion that branching considerations are inapplicable to the main office relocation of a national bank, and that the *bona fides* of the relocation is governed solely by the statutory provisions of Section 30 of the National Bank Act.[33]

We come now to appellants' alternative contention that, regardless of the *bona fides* of the PPNB applications, the doctrine of "competitive equality" between state and national banks requires that Section 30 be read together with and limited by the provisions of Section 36(c)(2). The essence of appellants' position is that if PPNB were a state bank, applicable New Jersey banking statutes[34] would not permit it to move its *main office* to Wayne and, accord-

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33 It is noted that the Comptroller contends that once we have determined that the planned PPNB relocation is *bona fide* and in accordance with Section 30, appellants no longer have standing to sue, since their suit becomes one merely to be free from what we have decided is the lawful competition of a national bank. It must first be said in reply to the Comptroller's jurisdictional challenge that insofar as appellants claim to be aggrieved by the arbitrary, capricious, and statutorily unauthorized action of the Comptroller, we have jurisdiction to entertain this suit pursuant to the Administrative Procedure Act, 5 U.S.C. § 702. See Association of Data Processing Service Organizations, Inc. v. Camp, — U.S. —, — [March 3, 1970; Slip Opinion, p. 7]:

> "We find no evidence that Congress in either the Bank Service Corporation Act or the National Bank Act sought to preclude judicial review of administrative rulings by the Comptroller as to the legitimate scope of activities available to national banks under those statutes. Both Acts are clearly 'relevant' statutes within the meaning of § 702."

Moreover, this Court has jurisdiction of the subject matter of the instant suit pursuant to 12 U.S.C. § 1331(a), inasmuch as appellants' contentions arise under a federal statute, the National Bank Act, 12 U.S.C. §§ 30 and 36(c)(2). See Gully v. First National Bank, 229 U.S. 109 (1936); Suburban Trust Co. v. National Bank of Westfield, 211 F. Supp. 694, 698 (D. N.J. 1962); Investment Company Institute v. Camp, 274 F. Supp. 624, 636-638 (D. D.C. 1967).

34 The New Jersey statutes referred to by appellants are N.J.S.A. 17:9A-22 and 23. See, *supra*, n. 8. It is not clear from the face of these sections that a state bank would be precluded from entering Wayne by moving its principal office. The New Jersey Commissioner of Banking and Insurance assures us that such is the intent of the provisions. Our disposition of appellants' contention, however, makes unnecessary the resolution of this issue.

ingly, under the concept of competitive equality, as well as general principles of statutory construction, a national bank is not permitted to move its main office into Wayne. Appellants rely principally on the legislative history of Section 36, and First National Bank in Plant City v. Dickinson, 396 U.S. 122 (1969), *Walker Bank* and *Marion Bank*.

It is clear, insofar as congressional history is concerned, that nothing in the language of Section 30 or in the commentary generated by its passage in 1886, and amendment in 1959, permits the inference that state law was intended to govern the movement of national bank main offices.[35] It is equally clear that when Congress enacted Section 36(c) in 1927, and substantially amended it in 1933, nothing was said concerning the incorporation of state banking laws into Section 30.

Appellants attempt to bridge this gap by resorting to the well recognized canon of statutory construction that statutes *in pari materia* should be construed together. However, the language and history of the two sections is clear and unambiguous, and it is quite obvious that the sections have independent statutory scope and purpose. Thus, the statutory construction principle has no application here. Latimer v. Sears Roebuck & Co., 285 F.2d 152, 157 (5 Cir. 1960).

Similarly, appellants' reliance on *Walker Bank* on the score of competitive equality is misplaced. *Walker Bank* held merely that a Utah restriction, which permitted branching only by taking over an existing bank, was binding on national banks in Utah, since the Utah provision was part of the express state law branching requirement, and Congress intended to insure "competitive equality" between

35 In 1959, Section 30 was amended to require Comptroller approval before a national bank could change the location of its main office *within* the limitations of the city, town or village in which it is situated. Pub. L. 86-230, § 3, 73 Stat. 457 (September 8, 1959). Prior to the enactment of Section 30 in 1886, a national bank, which was chartered by Congress, could only change its place of business by a special act of that body. Section 30 represented an attempt by Congress to relieve itself of that burden. See House Debates, 49th Congress, First Sess., 17 Cong. Rec. 1349 (1886). There is no evidence of any other congressional purpose ever having been voiced with respect to Section 30. Nor is there evidence of an intention on the part of Congress to make "competitive equality" the overriding policy of the National Bank Act.

state and national banks, "insofar as branch banking was concerned." 385 U.S., at 261. It was conceded in *Walker Bank* that the activity in question constituted branching. The only question before the Court was the extent to which Section 36(c) adopted state law restrictions on branching. The issue here is whether Section 36(c) was intended to adopt or to permit state law restrictions to govern the *non-branching* functions of national banks. One searches in vain for evidence of such an intention in the clear language and congressional history of Section 36(c).

Nor does the recent Supreme Court decision in *Dickinson* support appellants' position. The specific statutory provision before the Court in *Dickinson* was Section 36(f), which contains a general definition of the term "branch" for Section 36 purposes. In determining that certain off-premises services performed for customers by the First National Bank—an armored car pick-up and shopping center deposit receptacle—constituted branch banking, Mr. Chief Justice Burger stated that even in matters of branching, Congress was quite specific as to which provisions of state law were to be incorporated.

> "We reject the contention made by *amicus curiae* National Association of Supervisors of State Banks to the effect that state law definitions of what constitutes 'branch banking' must control the content of the federal definition of § 36. Admittedly, state law comes into play in deciding how, where, and when branch banks may be operated, *Walker Bank, supra*, for in § 36(c) Congress entrusted to the States the regulation of branching as Congress then conceived it. But to allow the States to define the content of the term 'branch' would make them the sole judges of their own powers. Congress did not intend such an improbable result as appears from the inclusion in § 36 of a general definition of 'branch.'" 396 U.S., at 133-134. (footnote omitted.) [36]

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36 See also, Howell v. Citizens First National Bank of Ridgewood, 385 F.2d 528, 530 (3 Cir. 1967).

As the foregoing indicates, the Supreme Court has been circumspect in its application of the competitive equality doctrine.

In light of the foregoing, we find without substance appellants' contention that state law restrictions must be read into the National Bank Act whenever, as in the case of main office relocations, state and national banks are arrayed in competing positions.

What has been said leaves for resolution appellants' claim that the District Court erred in refusing to consider *de novo* the issues of "motive" and defendants' alleged collusion. Judge Shaw, following a careful consideration of appellants' request for a *de novo* trial, stated:

> "In conclusion, I must observe that it seems to me in the hearing before the Comptroller, together with the entire voluminous administrative record, compellingly and well established that plaintiffs were afforded a full and complete opportunity to present all of their objections. At no point in the hearing were plaintiffs deprived of an opportunity to pursue the question of whether the office to be established in Wayne was to be a *bona fide* office or merely a branch. No questions on this subject were cut off. A large portion of the hearing was devoted to various aspects of the question, to wit, the physical size of the Wayne office as against the Prospect Park office, percentage of deposits arising from the respective service areas and the percentage to move to the Wayne office, the number of employees of various kinds who would move to Wayne, the projection of growth for the Wayne office; and, on comparison with the facts in the cases heretofore cited,[37] it cannot be said that the Comptroller's decision was arrived at without an adversary hearing, that there was no transcript, that there were no findings or conclusions

37 Citizens Bank of Hattiesburg v. Camp, 387 F.2d 375 (5 Cir. 1967), *cert. den.*, 391 U.S. 904 (1968); Peoples Bank of Trenton v. Saxon, 373 F.2d 185 (6 Cir. 1967); Bank of Haw River v. Saxon, 257 F. Supp. 74 (M.D. N.C. 1966).

made by the Comptroller. Further, it cannot be said that he acted in a unilateral manner or that there was any effort to hide any matter from the Court or from the protestants, and, most significantly, it cannot be contended that there was no substantial evidence in support of the Prospect Park National Bank's applications.

* * *

"Accordingly, I find that the hearing held, indeed the entire proceedings, were more than adequate to give plaintiffs an opportunity to protect their rights and present their arguments." [38]

Appellants dispute this. They assert that Section 10(e)(B)(6) of the Administrative Procedure Act, 5 U.S.C. § 706, requires that a trial court admit *de novo* evidence in all instances in which an agency hearing is not made expressly subject to the procedural requirements of Sections 7 and 8 of the Administrative Procedure Act, 5 U.S.C. §§ 556 and 557, or in which a hearing is not required by statute. Since the Comptroller is exempt from formal hearing requirements,[39] it is contended that appellants are entitled to present *de novo* evidence before the District Court.

We find no merit in appellants' construction of the applicable law on the standard of judicial review. We subscribe to the statement of the Court of Appeals for the Sixth Circuit in Warren Bank v. Camp, 396 F.2d 52, 54 (1968), that:

"The standard of judicial review is set by the Administrative Procedure Act. The Courts determine only whether or not the action of the administrator was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.' 5 U.S.C.

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38 Opinion of Shaw, J., *supra*, pp. 36-37.

39 See, e.g., First National Bank of Smithfield, North Carolina v. Saxon, 352 F.2d 267 (4 Cir. 1969); First-Citizens Bank & Trust Co. v. Camp, 409 F.2d 1086 (4 Cir. 1969); Davis, 1 Administrative Law Treatise, § 4.04 (1965 Supp.).

§ 706(2)(A) (Supp. II, 1965-66). See 4 K. Davis, Administrative Law § 28.16 (1958, Supp. 1965). Thus far the District Courts have with appellate approval exercised a considerable discretion in determining the form of review required for that decision. [Citations omitted].

"There appears, however, to be general agreement that a trial de novo is not required for every complaint where abuse of administrative discretion is pled. [Citations omitted].

"Here the District Judge, limiting his review to the pleadings and affidavits filed by the parties, held that complainant had not make [sic] out a prima facie case of abuse of discretion, and hence, that no trial de novo was required.

"We agree with this conclusion."

In the instant case, as earlier detailed, Judge Shaw made extensive findings concerning the adequacy of the hearing afforded appellants and the completeness of the administrative record. He specifically found that "the Comptroller dealt at length with the issue of the alleged subterfuge and absence of good faith," and concluded that the record did not support appellants' contentions that the Comptroller's approval of PPNB's applications was "arbitrary and capricious."[40]

On review of the record, we are of the opinion that it amply supports the District Court's critical findings that the Comptroller's approval of PPNB's applications was not arbitrary, capricious or an abuse of discretion; and that

40 Appellants' reliance on Bank of Haw River v. Saxon, 257 F. Supp. 74 (M.D. N.C. 1966), is misplaced. The District Court there found: "It is perfectly evident that the Comptroller was attempting to do nothing more than placate the plaintiff, and indeed the Court, by trying to make his action resemble some type of hearing. Never has the Comptroller revealed to the plaintiff or the Court the evidence before him at the time he made his decision, and he gives no plausible or rational reason as to why he deleted or blocked out important parts of his administrative file before certifying it to the Court." 257 F. Supp., at 79.

such approval was *bona fide*, free of collusion and in compliance with the applicable provisions of Section 30, which we hold to be controlling.[41]

For the reasons stated the Order of the District Court granting defendants' motion for summary judgment against the plaintiff and plaintiff intervenor will be affirmed.

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41 On the score of the contention of the New Jersey Commissioner of Banking and Insurance that there is an "unfair" result in allowing PPNB to move its main office in accordance with Section 30 and still retain its former main office as a branch we must note that N.J.S.A. 17:9A-19(B)(3), relating to branch offices, does not now provide that a bank which moves its principal office outside the municipality cannot retain its former principal office as a branch."

A True Copy:

Teste:

Clerk of the United States Court of Appeals for the Third Circuit.

Transcript of Oral Opinion

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Civil No. 423-69

THE RAMAPO BANK and BROADWAY BANK & TRUST COMPANY, banking corporations of the State of New Jersey, and NEW JERSEY BANK (National Association, etc.,

Plaintiffs,

v.

WILLIAM B. CAMP, Comptroller of the Currency of the United States, and PROSPECT PARK NATIONAL BANK, a national banking association,

Defendants.

Newark, New Jersey,
May 19, 1969.

Before: The Honorable ROBERT SHAW, U.S.D.J.

Appearances:

For Plaintiffs:

WILLIAMS, GARDNER, CALIRI, MILLER & OTLEY, Esqs.,
By: RICHARD S. MILLER, Esq., and RICHARD GOLDSMITH, Esq.; ROBERT ZIMMER, Esq., (Washington, D.C.)
Of Counsel.

For Comptroller of the Currency:

ELLIOT SCHER, Esq., Assistant U.S. Attorney; C. WESTBROOK MURPHY and JOHN E. SHOCKEY, Esqs., (Washington, D.C.)

For Prospect Park National Bank:

JEFFER, WALTER, TIERNEY, DeKORTE, HOPKINSON & VOGEL, Esqs.,
By: HERMAN M. JEFFER and GORDON D. MEYER, Esqs.

For State Banking Commissioner, Intervenor:

E. ROBERT LEVY, Esq., Deputy Attorney General, and JOEL L. SHAIN, Deputy Attorney General.

THE COURT: This action was brought by plaintiffs Ramapo Bank and Broadway Bank & Trust Company, banking corporations of the State of New Jersey, and New Jersey Bank, a national banking association, against William B. Camp, Comptroller of the Currency of the United States, and Prospect Park National Bank, a national banking association.

The controversy here arose out of the approval by the Comptroller of the Currency of a relocation of the main office of the Prospect Park National Bank from Prospect Park in Passaic County to Wayne Township in Passaic County. The action involved approval of the location of the main office

in Wayne Township and approval of the operation of the initial main office in Prospect Park as a branch. Plaintiffs here seek a declaratory judgment to set aside the approval given by the Comptroller of the Currency and also an order of this Court to enjoin the Comptroller from issuing a certificate of authority for the defendant Prospect Park National Bank to move its main office to Wayne, New Jersey.

The Comptroller has moved for summary judgment and (3) there is a crossmotion by plaintiffs for summary judgment. The matter is presently before the Court on the record of the proceedings before the Comptroller, and the administrative file together with the opinion of the Comptroller has been furnished to the Court. This administrative record will be marked as an exhibit of the defendants together with the opinion of the Comptroller.

The basic facts appear to be as follows: On May 15th, 1968, the Prospect Park National Bank, a nationally chartered bank, submitted applications to the Comptroller's regional office to relocate its main office from Prospect Park, New Jersey, to Wayne, New Jersey, a distance of approximately 2.7 miles, and to retain the existing main office in Prospect Park as a branch office of the relocated main office situated in Wayne. During the course of the proceeding before the Comptroller competing banks, as well as the New Jersey Commissioner of Banking and Insurance, were notified of the Prospect Park National Bank's applications. The New Jersey State Commis-

sioner took the position on June 3rd, 1968, that these applications were in violation of New Jersey banking laws. A protest was also filed on June 3rd, 1968, by the Ramapo Bank, a State chartered bank.

On June 27th, 1968, the Ramapo Bank was joined in its protest by the New Jersey Bank & Trust Company of Clifton, the Broadway Bank & Trust Company of Paterson and the Peoples (4) Trust Company of Hackensack.

The New Jersey Bank & Trust Company is the fifth largest bank in the State. It has two branches in Wayne and is affiliated through common ownership with the Ramapo Bank.

The Prospect Park Bank submitted detailed summaries of information to the Comptroller to support its applications. Included in this material were photographs showing the bank's existing main office and the overcrowding there. There was also a photograph and plans for the office that the bank proposed to establish in Wayne. These summaries also contain statistical information relating to or defining economic conditions of the Borough of Prospect Park and the nearby areas, such as the City of Paterson.

For example, the population of Prospect Park was 5,909 when the Prospect Park Bank was chartered as a national bank in 1925. In the intervening forty-four years the population has actually decreased and is now approximately 5,180. On the other hand, information was presented as to the

rapid development of Wayne Township and the public need there for adequate banking facilities.

The Prospect Park National Bank presented the following grounds to support its position that it really was relocating its main office rather than merely indirectly establishing a branch office in Wayne:

(5) At least fifty of the 110 employees of the Prospect Park office will be transferred initially. The president and one of the executive vice-presidents, and a senior vice-president will also move immediately. In addition thereto, a number of vice-presidents and assistant vice-presidents and lesser officers will be moved to Wayne immediately. It is further planned that the following operations and departments will be immediately relocated in Wayne: Bookkeeping Department, Electronic Data Processing, Check-filing Department, Comptroller's Department, Accrual Department, Bond and Investment Department, Stockroom and Purchasing Department, Check-book Imprinting Order Department.

A national bank examiner was assigned by the Comptroller's Office to investigate the applications, and the following is an excerpt from his report:

> "The present head office building located in Prospect Park is approximately forty-three years old. Lobby space and parking space is very limited and working space is inadequate for the volume of business

transacted. The bank has received estimates to construct a new building on their present head office site at a minimum cost of $1,500,000. However, they would have to utilize approximately seventy-five percent of their parking area. Management estimates that they have lost approximately (6) $4,000,000 to $5,000,000 in existing and potential deposits in the last three to four years due to this overcrowded condition."

It appears that the population of Wayne had increased from 11,822 in 1950 to an estimated 47,000 in 1968. The examiner discussed the growth potential of Wayne in his report, which I quote, as follows:

"Growth potential of the proposed service area is considered very good to excellent. The Wayne Township Planning Board anticipates the population will be 57,000 by 1973, and will increase to 65,000 by 1978, and will further increase to 68,000 by 1980. Due to the large portion of undeveloped land in Wayne Township, which is located in the prospective service area, it is anticipated that the projected growth figures will be met."

Then, again referring to the branch application, the examiner stated:

"The branch will continue to offer full banking services. Major demand for loans would be commercial loans for business,

mortgage loans and installment loans of all types. The branch will also service checking, savings, Christmas Club, and vacation club accounts. Subject has applied for a relocation of their present head office, as well (7) as permission to maintain a branch at their present head office site. If the applications are approved, it would greatly relieve the present overcrowded lobby and working conditions which now exist. If both applications are approved, subject's present site in Prospect Park would then be ample to service the present and future needs of the area."

At the request of the protesting banks an informal administrative hearing was held in the Comptroller's regional office in New York on August 20th, 1968. Representatives of the State of New Jersey, of the applicant bank, and of the protesting banks were present. The Regional Administrator stated the purposes and procedures of this hearing as follows:

"The purpose of this hearing is to assist the Comptroller in reaching his decision by presenting all factual data relative to the economic merits of the application. In accordance with our usual procedures, each side will be given a full opportunity to present his case. While questions will be permitted, no persons will be forced to answer any question without his consent. Members of this hearing panel, however, may ask questions of any witness at any time."

Transcript of Oral Opinion

The protestants presented four witnesses and seven exhibits. In addition, the attorney for the protestants (8) questioned at length both the president and the chairman of the board of the applicant bank. Both the applicant and the protestants were given ten days following receipt of the hearing transcript to submit additional data. Both the applicant and the protestants submitted such materials.

Based on the information before him, the Regional Administrator recommended approval of both applications. The Director of the Comptroller's Bank Organization Division and two Deputy Comptrollers of the Currency concurred. All recommended that the applications be approved. The Comptroller approved both applications on April 8th, 1969, in a ten-page written opinion. The Comptroller found that the economic condition of Prospect Park and neighboring Paterson were stagnant or deteriorating and that the bank's present main office was crowded and poorly suited for the operation of a bank the size of the Prospect Park National Bank.

The Comptroller agreed with the applicant that the bank would not be justified in spending a substantial sum of money to enlarge its present building or to build a new building at its present location. The Comptroller noted that in contrast Wayne Township was a vigorously growing suburban community. This growth was found to be due in part to an influx of people, including customers of the Prospect Park National Bank, moving from urban areas such (9) as Prospect

Park and Paterson into the nearby suburban communities of Wayne, Wyckoff, and Haledon.

The Comptroller also found that:

> "The proposed relocation of the main office of the Prospect Park National Bank is in all ways bona fide; that it is a prudent and necessary step to enable the applicant bank to continue serving both its shareholders and its depositors; that it will serve the public interest by establishing a banking office in Wayne Township where additional banking facilities are needed; that existing banks in the area will not be adversely affected; and that the application of the Prospect Park National Bank to relocate its main office from 124 Haledon Avenue in Prospect Park to Hamburg Turnpike in Wayne Township should be approved."

The Comptroller also approved the application to maintain the present main office in Prospect Park as a branch. However, since the bank would have the right to close this branch at any time if the branch was deemed economically infeasible simply by a resolution of the board of directors without the Comptroller's approval, the Comptroller stated that his approval of the main office relocation was in no way contingent upon approval of the branch application or upon the bank actually establishing and operating such a (10) branch.

On April 9th, 1969, the day after the Comptroller approved the applications, plaintiffs filed

this action for a declaratory judgment and to set aside the approval of the Comptroller of the applications of the Prospect Park National Bank.

Plaintiffs allege Federal question jurisdiction as jurisdiction under 5 U.S.C. Sections 701-706 (the Administrative Procedure Act) and under the Fifth Amendment to the Constitution.

After stating facts concerning the applications and the Comptroller's administrative procedures, the complaint alleges, in Paragraphs 23 through 26:

> "23. Approval of defendant Prospect Park's applications by defendant Comptroller was arbitrary, capricious, an abuse of discretion, and not in accordance with the law.
>
> "24. Approval of defendant Prospect Park's applications by defendant Comptroller was contrary to plaintiffs' Constitutional rights to due process of law.
>
> "25. Approval of defendant Prospect Park's applications by defendant Comptroller was in excess of the limitations of 12 U.S.C. 30 and 12 U.S.C. 36(c).
>
> (11) "26. Approval of defendant Prospect Park's applications by defendant Comptroller was unwarranted by the facts."

I might say at this point that these allegations of the complaint seem to pinpoint the position taken by the plaintiffs with perhaps one exception, and that is the claim of the right to a de novo hearing, but that in turn seems to be based upon an allega-

tion of absence of due process of law, to which reference is made in Paragraph 24 of the complaint.

As I indicated before, the Comptroller has filed a motion for summary judgment or for dismissal of the complaint for lack of jurisdiction, and defendant Prospect Park National Bank has joined in the motion. At the hearing this morning leave was granted to plaintiffs to move for summary judgment in favor of plaintiffs.

The State of New Jersey, through the Commissioner of Banking and Insurance, has intervened and been granted leave to intervene, and has also moved for judgment in favor of the plaintiffs.

It might be well at this juncture to make reference to some matters which are not in issue, but reference thereto may be made as assumptions. First, it is agreed that N.J.S.A. 17:9A-19, neither before or after its recent amendment, would not permit the Prospect Park National Bank to establish a branch in Wayne, and under Title 12 U.S.C. (12) Section 36(c) State law controls the branching of a national bank.

Next, it seems generally to be assumed correctly that a State bank could not relocate as was done here to avoid the State branching laws.

Third, it is agreed that Wayne is a growing community and banks which are not located there have motivation to devise means to get in (such as Prospect Park's plan in the present case or

paying a high premium to merge with an existing Wayne bank).

The controlling Federal statutory provisions are set forth in Title 12 U.S.Code, Section 30 and Section 36(c). Section 30 deals with the change of name or change of location of the main office of the bank, and Section 36(c) deals with the establishment of national bank branch offices.

It has been urged here that these statutes dealing with separate operations of banking must be read together and that effect cannot be given to Section 30 of the Banking Act according to the express text of that Section, but that superimposed upon it for purposes of practical application is the restriction on branching of national banks as set forth in Section 36(c).

It is the conclusion of this Court that the propriety of any action taken by the Comptroller in approving change of location of the main office of a national bank is a (13) question of Federal law, and the basic guide which the Court must observe is Section 30 of Title 12, to which I have just referred. In connection with the Federal law question involved and the significance of Congressional enactments, see Powell v. Citizens First National Bank of Ridgewood, 385 F.2d 528 (Third Circuit, 1967).

I will deal now with the question of jurisdiction. Initially the Comptroller challenges the jurisdiction of this Court to hear the complaint of plaintiffs. It is alleged that there is no specific

statutory authority for the bringing of this kind of an action. The Comptroller has cited no cases which would deny jurisdiction. Instead the cases to which he refers in his brief deal with other kinds of administrative actions or contain general statements about the rights of competitors.

The Administrative Procedure Act, 5 U.S. Code, Section 701(a) does provide for judicial review of the action of the Comptroller in a case of this kind. It provides: "This chapter applies, according to the provisions thereof, except to the extent that: (1) statutes preclude judicial review, or (2) agency action is committed to agency discretion by law."

Section 702 then provides that "A person suffering legal wrong because of agency action or adversely affected or aggrieved by agency action within the meaning of a rele-(14)vant statute, is entitled to judicial review thereof." By way of example, see First National Bank of Logan v. Walker Bank & Trust Company, 385 U.S. 252 (1966). That case dealt with the principle of competitive equality applied to bank branching. In that case there was a consolidation of three separate cases. In each case a competitor had sought review of action by the Comptroller. The Supreme Court did not even question the jurisdiction or standing of the plaintiffs.

In Bridgeport Federal Savings & Loan Association v. Federal Home Loan Bank Board, 307 F.2d 580 (Third Circuit, 1962), a case involving the Federal Home Loan Bank Board rather than the

Comptroller, it was held expressly that a competing savings and loan association had standing to complain of the Board's action. As was observed in Investment Company Institute v. Camp, 274 F. Supp. 624, at 637 (D.C. 1967), "a denial of standing, as urged by the defendant Comptroller, would leave the plaintiffs and all others similarly situated without a right to seek redress against capricious, arbitrary and unwarranted Regulations issued by the Comptroller, however flagrant and contrary to the intent of Congress."

It is also worth noting that the defendant Prospect Park National Bank has recently joined in this motion by the Comptroller. Yet it conspicuously failed to even mention (15) this issue in its brief, although it argues vigorously on all others.

In the case of Marion National Bank of Marion v. Camp, (Civil 1822, Northern District of Indiana, 1968), an unreported decision, a copy of which was provided to the Court, the Court there noted --

It seems to me that if both sides contend that the Court has no standing to review this, that perhaps I don't even have to finish the decision. Both sides agree they don't want review? They want to get out of here? I assumed you wanted it decided.

MR. ZIMMER: You have already denied our motion for continuance, but we contend we have standing and jurisdiction.

THE COURT: I was going into the jurisdictional question. If both sides are happy with the

Court not assuming jurisdiction and you decide you want to file a stipulation of dismissal, I will assure you I won't do anything to bother you. Of course, that has to be by both sides, not one.

MR. ZIMMER: May we have a moment, your Honor?

THE COURT: It might be appropriate for you to confer with your adversary because while you might want to get out of here, you have to have the consent of your adversary.

MR. ZIMMER: As far as the plaintiff banks are concerned, we believe that the Court has standing and jurisdiction, and we believe we are right as a matter of law, and we (16) would like a decision.

MR. LEVY: As I pointed out to you, the reason we are in this case is we feel that there is the greatest urgency that this question be decided and that the question of competitive equality be resolved finally by the courts of this country, and we would like a decision on the issue.

THE COURT: Of course, it goes without saying that one side leaves the other unhappy, but that side may take comfort in the fact that we have a Circuit Court of Appeals in Philadelphia, and that Court may entirely disagree with my reasoning, and if so there will be a different result.

If the question presented here is so significant it should be resolved and probably the best thing

is to go right on down the road and get your final decision. I take it that is what you want.

All I was suggesting a moment ago was that on account of the various positions taken with respect to jurisdiction of the Court I wanted to be sure before you had my decision that you wanted the case decided. There is a public aspect of this litigation, but it is not the kind of litigation where once it gets into court the party who brought it here can't voluntarily take it out by merely voluntarily discontinuing, but I take it you want a decision. Is that it?

All right. I was up to the point of quoting from Marion National Bank of Marion v. Camp, Civil 1822, Northern (17) District of Indiana, 1968. The quotation from that case is:

> "Throughout, the Comptroller has challenged the jurisdiction of this Court. In essence, the Comptroller in this case, as he has in many similar cases, contends that the plaintiffs have no standing to sue because they have no right to be free of competition. The plaintiffs have standing to sue to challenge the legality of the Comptroller's action under the facts and circumstances of this case. The plaintiffs in the case at bar, when faced with a proposed invasion of their property rights and irreparable injury from the proposed unlawful issuance by the Comptroller of a final certificate to the Van Buren Bank to convert to a national banking association, relocate its main office in Marion,

> Indiana, and retain its former 'main office' in Van Buren, Indiana, as a 'branch' of the converted and relocated institution, certainly have standing to bring this suit. Under these circumstances they have no other remedy."

In conclusion, on jurisdiction, I find that there is no merit to the contention that plaintiffs have no standing to sue and that the Court is without jurisdiction to entertain the action.

Now, gentlemen, I am going to take a few minutes' recess, while I get a glass of water and check further on my (18) notes. I am going to go next into the merits.

(Brief recess.)

THE COURT: It is my opinion that Title 12 U.S. Code, Section 30, is the controlling statute with respect to the establishment of a main office by a national bank. It is my further opinion that when Congress enacted Title 12 U.S. Code Section 36(c) it did not intend any of the provisions of that Section to be incorporated in Section 30, either by implication or otherwise. In fact, I have reached the conclusion that a short answer to the argument that Section 30 cannot be applied without consideration of the provisions of Section 36(c) is that if Congress so intended it would have expressly stated that to be the fact.

Moreover, it is inconceivable to me, as urged here during the course of oral argument, that Congress in adding Section 36(c) relating to

branches to the National Banking Act, did so completely unmindful of the existing legislation relating to the establishing of a main office. The primary concern, as far as I can discern, in the enactment of Section 36(c) was to place national banks with respect to branches on a parity with State banks, and to afford national banks the same treatment as was afforded State banks in the various States. To put it another way, it was to remove any disadvantage suffered by national banks.

I find nothing in the two Sections of the Act which (19) would indicate that Congress was seeking to do anything in the enactment of Section 36(c) except to remove the then possibly existing disadvantage. If Congress had intended that the location of a main office of a national bank was subject to State laws relating to the establishment of main offices it would have expressly stated that to be the fact. As I indicated during the course of oral argument, it seems that this could have been done by adding one or two sentences which in substance provided in Section 36(c) the requirement of State law as to the establishment of a branch office of State banks shall also be observed in the establishment of the main office of a national bank. Congress, however, did not do so, and this Court does not feel free to read into the legislation what is not to be found there.

Counsel during the course of argument commented upon the wisdom of this, emphasizing not only uniformity of treatment, but competitive equality. The wisdom of the legislation is not a

matter with which this Court is to be concerned. It must concern itself only with what Congress saw fit to do and the power of Congress to do what has been done cannot be challenged. There was no Constitutional mandate that it even adopt Section 36(c). It was entirely free to permit branching of national banks in any manner that it chose, just as it was entirely free to provide the requirements for the establishment of a main office.

(20) Section 30 permits a national bank to relocate its main office within thirty miles of an existing main office "with the approval of the Comptroller," by the vote of the shareholders owning two-thirds of the stock of the bank. There is no reference whatsoever to State law.

Now, here it has been conceded that none of the requirements of Section 30 or other Sections of Title 12 with respect to the relocation of a main office in Wayne have not been observed. In fact, on oral argument it was conceded that all of the statutory requirements are met.

I should also say, to bring this question into clear focus, that Section 36(c) permits the national bank to establish and operate a branch office only "if such establishment and operation are authorized to State banks by the statute law of this State." There is no dispute that a State bank in New Jersey in the position of the Prospect Park National Bank could not establish a branch in Wayne. It is also clear that a State bank in New Jersey could not relocate its main office from Prospect Park to

Wayne, so we have here a situation where the approval given by the Comptroller permits an operation by the Prospect Park National Bank in which no State bank could engage.

In conclusion, on that aspect I might say that there is also no dispute as to the fact that if the Prospect Park National Bank's main office were, pursuant to approval of (21) the Comptroller, legally relocated in Wayne, New Jersey law would permit it to maintain a branch office in the municipality of Prospect Park.

Now, plaintiffs contend that the move by the Prospect Park National Bank is merely a subterfuge to avoid New Jersey restrictions on branching. Plaintiffs challenge the good faith, not only of the Comptroller, but of the defendant Prospect Park National Bank, saying in effect that the office proposed in Wayne is not in fact and will not in fact be a main office, but that it is merely labelled as a main office in order to avoid the operation of the New Jersey branching statute. Plaintiffs argue that Sections 30 and 36(c) must be read together to prohibit the bank from doing indirectly what it could not do directly. In conjunction with this they also claim that they were denied the opportunity before the Comptroller of showing collusion between the Prospect Park National Bank and the Comptroller to devise a means to evade the New Jersey laws, and the opportunity of showing the motivation for the two applications which the Prospect Park National Bank filed with the Comptroller. It is my opinion that the motivation is completely obvious to anyone. Wayne appears to be fertile territory for banking facilities, and

presumably no bank would move into the area without the prospect of a profit, and I don't think it could be seriously disputed that the Prospect Park National Bank was motivated by the favorable location and (22) the opportunity to prosper in Wayne, an opportunity which apparently no longer existed in Prospect Park. When I speak of prospering, I am speaking of future growth. I am not speaking of maintaining the status quo and operating without loss to stockholders.

I can make this aside observation, I doubt whether there is any bank in the State of New Jersey that would like to be committed indefinitely in the future to maintain its present status without increase in growth and without opportunity for increased profit.

As I mentioned, the Prospect Park National Bank could not establish a branch in Wayne under the New Jersey law. The only alternative, in the absence of the present application to relocate its home office, would have been to merge with an existing bank in Wayne. As I have gathered from the record here, the New Jersey Bank & Trust Company, a plaintiff in this action, did exactly this by merging with the Wayne State Bank. No doubt the action was stimulated by the desirability and growth potential of Wayne. However, the price, it seems, was high. I understand that — and I believe this is part of the record — that the New Jersey Bank was forced to pay a one hundred percent premium to do this, which has no significance in this case except to fortify the conclusion of the desirability of establishing new banking facilities in

Wayne.

(23) It has also been suggested that the Comptroller and the Prospect Park National Bank may have discussed the plan of relocation prior to the time that the applications were filed. Even if that is so, I think it is irrelevant because it only touches upon the central theme of motivation, which, as I said before, I believe is obvious to anyone. If it occurred, there may be impropriety in this type of approach to a public agency, but if it occurred I don't see how it goes directly to the merits. The merits must be considered on the basis of the evidence supporting the propriety of the relocation.

In summary, if what the Prospect Park National Bank did, what the Comptroller did, had the sanction of law the motivation of the bank is entirely irrelevant, particularly so when that same motive would, I am sure, prompt any other bank to seek to take advantage of the rapid growth of the municipality and the forecast of a continuing rapid economic development.

Now, on the merits of the subterfuge charge, the plaintiff relies strongly on the case of Marion Bank v. Camp, supra, an unreported decision which has been provided to the Court. The facts in that case are quite similar to the present case except that in addition to a main office location and the conversion of the existing main office to a branch, the bank also applied for and had approved (24) first its conversion from a State to a national bank. The Court noted that "The Comp-

troller contends that the relocation of the Van Buren Bank in the City of Marion pursuant to 12 U.S.C. Section 30 does not incorporate State banking law, is within the sole discretion of the Comptroller and, therefore, under the circumstances of this case, is clearly lawful. Therefore, reasons the Comptroller, the branch banking authority, sought in Part 3 of the application in the instant case, under 12 U.S.C. Section 36(c), must be considered separately and as if the other two parts of the application did not exist. Consequently, says the Comptroller, each of the anticipated approvals of the Comptroller when separately considered are valid and, a fortiori, the whole is valid."

The Court concluded that the scheme was a mere subterfuge that would violate the branch banking laws of the State of Indiana. The Comptroller cites Traverse City State Bank v. Empire National Bank, 228 F. Supp. 984 (Western District of Michigan, 1964), to support his position. The Court there refused to read Section 30 and Section 36(c) together, saying:

> "Title 12 U.S.C.A. Section 30 does not oblige the Comptroller to first find 'necessity' before he approves relocation of a national banking association's main office. The statute is silent on the (25) finding of 'necessity' as a condition precedent to his approval of a national bank's main office move. The language of the statute makes the move dependent only upon 'approval' by the Comptroller and a vote of two-thirds

of the shareholders of the national bank.

> "There is a substantial difference between the National Banking Act relating to the relocation of main offices and the State law relating to the relocation of State bank main offices. It was apparently the intent of Congress not to limit the relocation of main offices of national banking associations by reference to State banking laws, since there is no such indication. On the other hand, Congress has specifically provided under Section 36, the national branch banking statute (for reference to State law). The specific difference is a compelling reason for us to refuse to interpret the national banking association's main office relocation as containing the same limitation as the branch banking statute."

It is noted that the Comptroller has appealed the Marion Bank case to the Court of Appeals for the Seventh Circuit and that argument was heard on April 16th, 1969, but that decision has not been rendered.

Even assuming or forecasting what the decision would be, if favorable to the Comptroller, this Court would not (25) be bound to observe it. Cases other than those of the United States Court of Appeals for the Third Circuit or the United States Supreme Court are not binding precedent guiding the actions of this Court, though they are entitled and are given considerable attention and respect, and many times I find them very per-

suasive, as indicated in the opinion that I am rendering here, as I cite cases of other Circuits and Districts.

Any reliance here upon the Logan case is, in my opinion, misplaced as it relates to the issue here. The Logan case merely held, so far as it has any relation to this case, that "Congress intended to place national and State banks on a basis of 'competitive equality' insofar as branch banking was concerned." The argument that this should be extended to all matters involving national banks, such as relocation of main offices, is not persuasive. The express language of Section 30 is to the contrary and merely requires the approval of the Comptroller without reference to State law.

If Congress had intended otherwise it could have stated so in the drafting of Section 36(c).

With reference to the Marion Bank case, the Court goes on to state that it was there conceded that "the defendants seek to accomplish a result which is clearly prohibited under state law by mislabeling as a move what is really a branch." (27) Page 22. The Judge went on to discuss why the relocation was only a branch and not a new main office. Then he observed that "the case now before this court differs from the Traverse City State Bank case in one crucial respect. The District Court in the Traverse City State Bank case either found or assumed for reasons which are not discussed, that the defendant bank's move from Empire to Traverse City was a genuine relocation of the defendant bank's main office. This

court's findings are limited to the facts and circumstances of this case, and in this case the Van Buren Bank's proposed 'relocation' is a subterfuge, and the Comptroller's approval in this case is therefore subject to the limitations upon branching set out in 12 U.S.C. 36(c)." Pages 25-26.

In this particular case I find no evidence which would support a conclusion that the proposed relocation of the main office of the Prospect Park National Bank is nothing but a mere subterfuge, and that, in fact, what is being called the main office is actually a branch.

I should say in connection with that finding that if there were no genuine main office relocation I might be impelled to the conclusion that the approval of the Comptroller should be set aside as being inconsistent with the National Bank Act, particularly Section 36(c). In connection with this, the motivation for moving into Wayne is irrelevant, as I said before. If the result is lawful, (28) and if as a fact the Prospect Park National Bank has actually moved its main office into Wayne, the factors which induced it to go into that community instead of some other community are of no consequence. On the other hand, if the main office relocation is only a sham attempt to establish a branch office and the main office would actually still be the old location, then this Court would be warranted in treating this as a subterfuge since in substance it would be a branch move rather than a relocated main office, and in such instance the National Banking Act, Section 36(c), which compels observance of

State law would be the controlling statute.

Now, it has been urged here that I should take and I should receive evidence on this subject, and I have denied the motion for any hearing de novo on this aspect, because I feel that adequate consideration was given to it by the Comptroller's Office and that I am limited in review here of the Comptroller's action to the record established in that office, holding that my function is limited to a determination of whether approval of the Comptroller of the Prospect Park National Bank's application for relocation of its main office was arbitrary and capricious, unwarranted in law and in fact. I find otherwise from the record.

The Comptroller dealt at length with the issue of (29) the alleged subterfuge and absence of good faith. It is stated in his ten-page opinion:

> "The protestants have made two principal contentions: First, that the main office relocation will not be bona fide (a) because a majority of the deposits of the Prospect Park National Bank are not located in Wayne and will not be located there following the move, and (b) because the transfer of the major administrative functions of the bank to the new office does not necessarily determine that this office will be the main office; and, second, that even if the main office relocation is bona fide, it is not authorized by the provisions of the National Bank Act relating to main office relocations, 12 U.S.C. Section 30, when coupled with the

Section of that Act relating to branches, 12 U.S.C. Section 36, and the portions of New Jersey law incorporated into this latter section.

"The transcript of the informal administrative hearing on these applications contains a great deal of confusion on the subject of relocating deposit accounts. Before 1966 the Prospect Park National Bank had only one office, the main office which it now seeks to relocate. In 1966 it merged with the Peoples Bank of Hawthorne and retained the acquired bank's main office as a branch. All accounts opened at the Prospect Park office, whether before or after (30) 1966, are attributed by the applicant for accounting purposes to its Prospect Park office, no matter where the depositor may live, and/or where he may do the majority of his banking transactions. For purposes of its relocation application, the bank established that $17 million of its present deposits belonged to customers with addresses in the proposed primary service area in Wayne Township. If these accounts are transferred to the Wayne office for accounting purposes, this will leave $73 million attributable to the Prospect Park office, even though residents of Prospect Park have only a total of $4.5 million in deposits with the bank. From these figures, the protestants apparently argue that since the bank for accounting purposes will leave a greater amount of deposits with the Prospect Park office than

it transfers to its Wayne office, the Wayne office cannot be a main office.

"This argument appears frivolous, but the protestants have pressed it with such seeming earnestness that a brief discussion appears warranted. First, the power of a national bank to relocate with the Comptroller's approval its main office pursuant to 12 U.S.C. Section 30 is in no way circumscribed by a requirement that a particular number of (31) accounts be transferred. Second, there is no way to distinguish the main office of a bank from its branches by the number, size, or percentage of deposit accounts, or the addresses of the depositors. If plaintiffs' contentions were accepted, the present main office of Prospect Park could not be its main office because only 4.2 percent of its deposit accounts belong to customers with Prospect Park addresses. Finally, even if the protestants' theory were acceptable, the record in this case shows that the Prospect Park National Bank already has more deposits generated from Wayne than from Prospect Park."

There are further pertinent excerpts bearing on this subject in the opinion. I won't belabor the record further with this, except to say that I have given consideration to all of them.

In my opinion, the conclusions of the Comptroller are amply supported by the evidence which is set forth in a 500-page administrative record.

The claim is made by plaintiffs that the hearing held was inadequate and that this Court should hold a de novo hearing. It is difficult to determine what the proper legal guidelines are in this area both as to the kind of hearing which the Comptroller is required to hold and as (32) to the nature of the review and hearing in the District Court. On the one extreme is a case such as Citizens Bank of Hattiesburg v. Camp, 387 F.2d 375 (Fifth Circuit, 1967), where the Court stated:

> "The present applicable statute and regulation do not require the Comptroller to hold a formal adversary hearing in determining whether to approve the chartering of a new national bank. The action of the Comptroller is not subject to review by trial de novo. The court may not substitute its judgment for that of the Comptroller.
>
> "Upon the present record we cannot hold that the Comptroller denied the appellants a full and fair opportunity to oppose the granting of the charter, that he acted arbitrarily or otherwise illegally." That is at Page 376.

There is no requirement that the Comptroller hold a formal adversary hearing. In the case of a main office relocation or a branch application at the other extreme from Citizens Bank of Hattiesburg we have Peoples Bank of Trenton v. Saxon, 373 F.2d 185 (Sixth Circuit, 1967), where the Court stated:

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"The Comptroller's decision was arrived at without an adversary hearing, consequently there is no transcript or other record which reveals the find-(33)ings and conclusions of the Comptroller incident to his decision. At the trial the Comptroller successfully urged the 'executive privilege,' thus barring disclosure of much of the evidence upon which he arrived at his judgment.

"It is our opinion that the District Court proceeded according to law and that it would have been erroneous for the Court to have based its judgment merely upon review and analysis of the tenuous evidence disclosed by the Comptroller's file. It was the District Court's mandatory duty to conduct an adversary hearing and to determine upon the whole record in a de novo proceeding whether the Comptroller's decision was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law."

The case upon which plaintiffs rely seems to be Bank of Haw River v. Saxon, 257 F. Supp. 74, where the Court stated:

"The scope and extent of judicial review of the Comptroller's decision is dependent upon whether he conducted a hearing before making his decision. He was not required to make an evidential record or to make findings and conclusions, but if he acted in a

> unilateral manner, the plaintiff is (34) entitled to de novo hearing in this court without being held to the substantial evidence rule or 'an opening-presumption of correctness of any fact which it may appear to the court was adopted by the Comptroller for his decision.'"

I conclude that the Comptroller was not required to hold a formal adversary hearing. All that I find to have been necessary is that the protestants were given a reasonable opportunity to present their case and attack the applications. If in this instance no hearing was held or no opportunity was afforded to submit evidence, or if there was no record upon which the Comptroller could base his decision then a de novo review in this Court might be required.

I find in this case that it is not required. In connection with this I note that plaintiffs were required by the Court to submit a memorandum detailing their reasons for considering the hearing to be inadequate. The reasons advanced have not impressed me. They point out that the hearing was limited to the economic merits of the application, and that witnesses were not sworn and were not required to answer any questions without their consent. No one of these factors is determinative.

The plaintiffs were cut off only on the issues of collusion between the Comptroller and Prospect Park National (35) Bank and the motivation for the dual applications filed. These matters I have

already discussed, and I believe that the issues raised are irrelevant.

There is reference in the memorandum of plaintiffs to a hearing held before the Comptroller's Office in an application by the First National Bank of Passaic to relocate its main office in Wayne. That application was pending roughly around the same time as the one in the Ramapo case. Extensive quotes from that hearing are reproduced. It is argued that they help to show the bias on the part of the Comptroller, and they demand a de novo hearing in this Court on the issues of bias and collusion.

I find this contention without merit.

Plaintiffs also advance here today in oral argument — I believe in a separate memorandum — that there are ex parte communications between the Prospect Park National Bank and the Comptroller, but nothing occurred of which the protestants were not aware, and I cannot find any material to which reference is made that there was any prejudice to protestants. It is my opinion that the only issue here that merits consideration is whether in fact, as established by the record, the relocated main office would in fact be a main office of the Prospect Park National Bank and not in fact a branch, and I reach the conclusion that there is ample evidence from the record before the (36) Comptroller to justify his opinion that the office in Wayne would be a main office and not a branch.

In conclusion, I must observe that it seems to me in the hearing before the Comptroller, together with the entire voluminous administrative record, compellingly and well established that plaintiffs were afforded a full and complete opportunity to present all of their objections. At no point in the hearing were plaintiffs deprived of an opportunity to pursue the question of whether the office to be established at Wayne was to be a bona fide office or merely a branch. No questions on this subject were cut off. A large portion of the hearing was devoted to various aspects of the question, to wit, the physical size of the Wayne office as against the Prospect Park office, percentage of deposits arising from the respective service areas, and the percentage to move to the Wayne office, the number of employees of various kinds who would move to Wayne, the projection of growth for the Wayne office; and, on comparison with the facts in the cases heretofore cited, it cannot be said that the Comptroller's decision was arrived at without an adversary hearing, that there was no transcript, that there are no findings or conclusions made by the Comptroller. Further, it cannot be said that he acted in a unilateral manner or that there was any effort to hide any matter from the Court or from the protestants, and, most significantly, (37) it cannot be contended that there was no substantial evidence in support of the Prospect Park National Bank's applications.

The administrative record is voluminous and the hearing held was thorough, and plaintiffs were given a complete opportunity to participate in the proceedings before the Comptroller's office. In fact,

the hearing was adjourned for two weeks at the request of the protestants. All parties were given the opportunity to submit any additional documents within a period of ten days after the hearing.

Accordingly, I find that the hearing held, indeed the entire proceedings, were more than adequate to give plaintiffs an opportunity to protect their rights and present their arguments.

The motion of the defendants for judgment on the basis of the record in the Comptroller's Office will be granted on the ground that this Court finds there was substantial evidence to support the findings of the Comptroller.

How long will it take you to submit an order, an order for the entry of judgment?

MR. ZIMMER: Would it be appropriate to ask whether the order — we intent to appeal to the Third Circuit — whether the order would contain a stay, since competitive rights are affected here?

MR. MURPHY: On the time for the order, I think we (38) can submit it this afternoon.

THE COURT: That is not the question he raised. He says he is going to the Third Circuit and he wants a stay of the opening of the main office in Wayne until the Circuit Court of Appeals has had an opportunity to decide whether I am wrong.

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MR. JEFFER: We would object to that application, Judge.

MR. ZIMMER: It is going to be very difficult to unscramble. For example, once the building is up and the depositors are taken away from the protesting banks, whether or not the plaintiffs succeed in the Court of Appeals we will still have suffered the harm, and I would submit, since this case has been pending before the Comptroller for almost a year, that it is going to be unfair to have the accounts taken away and deprive the plaintiffs of an opportunity to actually succeed against what they contend to be an illegal move into Wayne. Unless we are granted the stay, the Court of Appeals judgment may be of no effect to us.

THE COURT: How will you be irreparably harmed?

MR. ZIMMER: First, there are loans and deposits that are presently held by all of plaintiffs that will be taken away by the opening of this office. Secondly, the Ramapo Bank as well as the other plaintiffs, as well as the New Jersey Bank, have projections as to their growth. (39) Now it was part of the record that there would be dilution of the market in this area, which is going to be fairly substantial if the bank actually opens its doors and starts taking away this market. Once these people are there, they are certainly going to stay with Prospect Park even at the time the office is closed. We will have no opportunity to regain them.

THE COURT: You mean that when they select the Wayne office of the Prospect Park National Bank because of its convenience, and that main office is no longer in existence they are going to go over to Prospect Park with their business?

MR. ZIMMER: Let us consider first of all the other office of the Prospect Park National Bank which is three miles away--

THE COURT: No. I don't think I will grant any stay. I will leave it to your clients to hold their business as best they can. I am inclined to think that perhaps, viewing this whole picture, that probably a little competition over there will stimulate better service to the public, so you work hard to hold on to your customers. If you satisfy them, they won't leave you.

MR. LEVY: I didn't want to interrupt during your decision. I did want to point out one factor for the record. You indicated during your decision that all parties concede (40) that the requirements of the State statute as far as the main office relocation itself --

THE COURT: Tell me one. I raised this before argument, before I went into the main argument. Tell me one requirement that wasn't met, except your reference to Section 36(c).

MR. LEVY: This was our entire point.

THE COURT: What was your entire point?

MR. LEVY: Our entire point was that Section 30 was not met, that this in fact was not one of --

THE COURT: I doubt whether that is a question of fact, and I find that the Comptroller's decision is well supported by the evidence. There was a main office.

MR. LEVY: I want to make it clear that this was something we did not concede.

THE COURT: Other than that, you concede that all other requirements were met, except your contention that it wasn't a main office?

MR. LEVY: That is correct, and along this line we asked for a declaratory judgment. One of the questions that did concern us was that of definition of the main office.

THE COURT: Look, counsel --

MR. LEVY: Could we get a statement on that, your Honor?

(41) THE COURT: I have already decided the case. However, if it makes you feel any better I will add: This judgment will be entered in favor of the defendants and against plaintiffs with costs. Now, that is your declaratory judgment.

Are there any other questions?

MR. SCHER: We can have it prepared this afternoon, your Honor.

THE COURT: I would like to dispose of it and have the order entered, and also I think that the plaintiffs are entitled to have an order entered promptly so that they can file a notice of appeal and get on their way and hope to get a final decision shortly.

MR. ZIMMER: Thank you.

MR. LEVY: Thank you.

THE COURT: Court is recessed — I will modify that. That remark as to costs was an afterthought. You will get your judgment without costs. You don't need them.

Opinion of the Comptroller of the Currency

THE ADMINISTRATOR OF NATIONAL BANKS

WASHINGTON, D.C. 20220

OPINION OF THE COMPTROLLER OF THE CURRENCY ON THE APPLICATIONS OF THE PROSPECT PARK NATIONAL BANK FOR PERMISSION TO CHANGE THE LOCATION OF ITS MAIN OFFICE FROM 124 HALEDON AVENUE, PROSPECT PARK, NEW JERSEY, TO HAMBURG TURNPIKE AND DUNCAN LANE, WAYNE, NEW JERSEY, AND TO RETAIN ITS FORMER MAIN OFFICE AS A BRANCH.

On May 15, 1968, the Prospect Park National Bank applied to the Comptroller of the Currency for permission to relocate its main office from 124 Haledon Avenue in the Borough of Prospect Park, New Jersey, to the corner of Hamburg Turnpike and Duncan Lane in Wayne Township, New Jersey. The application stated that this relocation was needed to relieve overcrowding in the present building; to service customers who were moving away from the bank into more suburban areas; and to move the bank from an area where the population and economy was static or declining into a growing and more prosperous community. In a separate but simultaneous application the bank sought permission, if the main office relocation was approved, to retain its present office at 124 Haledon Avenue as a branch to service the senior citizen population and the local industrial, commercial, business and profes-

sional establishments in Prospect Park and nearby Paterson.

Competing national banks and the New Jersey Commissioner of Banking and Insurance were notified of the application. The New Jersey Banking Commissioner objected to these applications upon the grounds that the consideration of these two applications simultaneously would violate the law of New Jersey. Similar objections were filed by the New Jersey Bank & Trust Co., a state chartered bank which has since sought and received permission from the Comptroller to convert to a national bank under the name New Jersey Bank, N. A.; the Ramapo Bank, a state chartered bank affiliated with the New Jersey Bank & Trust Co.; and Broadway Bank & Trust Co. and Peoples Trust Co., both state chartered banks. These protestants were given at their request an opportunity to appear before the Regional Administrator of National Banks at an informal administrative hearing. Witnesses and documentary materials were presented at this hearing and a verbatim transcript was made. The protestants and the applicants also submitted voluminous written materials both before and after this informal hearing.

Prospect Park is a small, highly urban borough in Passaic County in Northern New Jersey. The entire borough is only about twelve blocks long and four blocks wide, or four-tenths of a square mile in area. The borough of Prospect Park abuts on the city of Paterson.

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Prospect Park and the nearby area of Paterson are economically similar. Population of both cities has remained approximately the same since 1930, with the population of Prospect Park actually declining slightly to a total of 5,180 residents in 1968. Prospect Park is predominantly residential, characterized by older two-family homes ranging in price from $15,000 to $30,000. There has been very little new housing built in Prospect Park since 1930. Commercial development consists primarily of about seventy retail and service establishments with small payrolls, although there are a few industrial concerns in Prospect Park who employ fifty people or more. Traffic and parking congestion around the bank has grown to the extent that automobile access to the bank is substantially impeded. The neighboring area of Paterson is similar in character, but much more deteriorated.

The applicant Prospect Park National Bank was chartered and established its main office at 124 Haledon Avenue in 1925. The pictures and architectural plans submitted in connection with its application to relocate show that the bank's main office began as a brick facade on a three story frame house and has since then been added to and modified. As a result, the present main office, in addition to being crowded, is poorly suited for operations of a bank the size of Prospect Park National Bank. This bank now maintains a branch office in Hawthorne, New Jersey, and has deposits of more than $115 million.

The applicant bank must expand and improve its

physical facilities. The bank's employees and its customers are intolerably crowded, as demonstrated in the photographs the bank submitted. The applicant has received plans for enlarging and remodeling its present facilities, but such plans are extremely costly. The bank believes, and the Comptroller agrees, that the bank would not be justified in spending a substantial sum of money to enlarge its present building or to build a new building at its present location which is in a declining area.

The applicant has thus proposed to relocate its main office 2.7 miles to the corner of Hamburg Turnpike and Duncan Lane in Wayne Township. Wayne Township is a vigorously growing suburban community. The population of Wayne Township has grown from 11,822 in 1950 to 29,353 in 1960, and 47,000 in 1968. During 1967 alone tax assessments on real property in Wayne increased $19 million due to new construction. This growth is due in large part to an influx of people moving from more urban areas such as Prospect Park and Paterson. The trend is illustrated by the members of the board of directors of the applicant bank. When Prospect Park National Bank was chartered in 1925 all of the original thirteen directors lived either in Prospect Park or in Paterson. At the last examination of this bank, however, only three directors — Messrs. Keyser, Reid, and Southman — lived in Prospect Park and none lived in Paterson. The bank's directors, like its customers, are moving from the highly urban Prospect Park-Paterson area into nearby suburban communities such as Wayne, Wy-

coff, and Haledon. The applicant has estimated without contradiction that it has lost $5 million in deposits in the last four years because of the location of its office.

Wayne Township consists of approximately twenty-five square miles, of which 35 percent is still available for development, with more than one half of this 35 percent in the service area proposed by the applicant for its relocated main office. The average home in the proposed service area is only eight years old and the price range on these homes is $25,000 to $40,000. In addition, 1700 rental units have been constructed in the last three years in garden type apartments and these units are fully rented. Median family income in Wayne for 1960 was $8,363, or $1,427 higher than the median family income in Prospect Park. The proposed site for the relocated office is on Hamburg Turnpike, which is a principal artery that will give convenient automobile access to the rest of the Township and to the surrounding communities, including Prospect Park. There is a major shopping center located on Hamburg Turnpike less than a mile away and another such shopping center is planned. Just across the Turnpike from the proposed bank site is an industrial park including establishments by Owens-Illinois Co. with 125 employees, Mosler Safe Co. with 260 employees, W. R. Curtin Co. with 50 employees, Alkon Products with 120 employees and a planned building for Finetex Electronics Co. with 50 employees. Paterson General Hospital is developing a multi-million dollar medical complex on a 90-acre tract adjacent to the site selected

by the applicant for its main office. The first phase of this complex will be a $7,500,000, two hundred bed hospital to be completed by 1971 which will employ almost 500 persons. A nursing home with a 500 bed capacity is now under construction, and various professional buildings for individual doctors are being planned. Paterson Teachers College which employ 460 persons and has 6000 students is located just one half mile away from the proposed main office site. Also under construction not far from this site are the general headquarters of Union Camp Co. with 600 employees, and an office building for Kennedy Sinclair where 40 people will be employed.

After reviewing these facts, the Comptroller's investigation examiner noted that, in contrast to the bank's present location, "growth potential of the immediate service area is considered to be excellent." The protestants have not seriously disputed this conclusion. Indeed, the protestant New Jersey Bank & Trust Co. stated in its 1967 annual report that Wayne Township's "commercial, industrial, and residential growth continues at an unprecedented level...."

The applicant bank has submitted a photograph and the architectural plans for its proposed new main office. These plans show a large, well designed two story office building with a full basement which will be designed solely for use as a bank building. The bank has purchased 3.68 acres which will allow ready access for a drive-in window and parking for more than 100 cars. The bank fully intends to move all of its major func-

tions to this office, including the executive offices, the bookkeeping department, the bond and investment department, the stock room and purchasing department, and all of its electronic data processing equipment.

Wayne Township is now served by five banking offices. Two of these offices — the main office of the protestant Ramapo Bank on Route 23, the Willowbrook branch of the protestant New Jersey Bank & Trust Co. located in a shopping center being developed near the intersection of Routes 23, 46, and 80 — are between five and six miles from both the old and the proposed new location of the applicant and should not be measurably affected by the relocation. The other banking offices in Wayne are the Wayne State branch of the protestant New Jersey Bank & Trust Co., located on Valley Road three miles southwest of the applicant's proposed main office site; and two branches of the First National Bank of Passaic County, the Mountain View branch located at the intersection of Route 23 and Boonton Road and the Preakness branch located on Hamburg Turnpike two miles west of the proposed site. In addition, the New Jersey State Banking Commissioner on March 14, 1969, approved a branch of the protestant Ramapo Bank which will be in a shopping center on the Hamburg Turnpike about a mile northwest of the proposed relocation site of Prospect Park National Bank.

There is no indication that the solvency or even the profitability of any of these banks will be adversely affected by the proposed relocation.

The First National Bank of Passaic County has not objected to this relocation application. The New Jersey Bank & Trust Co. is the fifth largest bank in the state with deposits of over $400,000 and, as indicated by the Comptroller's approval of its conversion application, it is quite healthy and well managed and can withstand any additional competition resulting from this relocation. The Ramapo Bank is affiliated with and thus has the backing of the New Jersey Bank & Trust Co., and in addition has stated to the Comptroller that it "has enjoyed substantial deposit growth since it was formed in June 1967, and has become a viable competitor to all of the banking facilities operating within the Wayne market." Protestants Broadway Bank & Trust and People's Trust Co. will not be adversely affected because the relocated main office of the applicant will be several miles further than it now is from the offices of these protestants. Protestant New Jersey Bank & Trust Co. has contended that its Wayne State branch is not profitable, but the accounting methods by which this conclusion was reached are somewhat obscure. The Ramapo Bank, New Jersey Bank's affiliate, has demonstrated its view of the need for the profitability of additional banking facilities in the area by its application for a branch on the Hamburg Turnpike. This area is undoubtedly a profitable one for the new banking facilities, and the Comptroller quite agrees with the following statement of the New Jersey Banking Commissioner in approving the Ramapo Bank's application for a branch on Hamburg Turnpike:

> My experience has been that reasonable

> and healthy competition does not necessarily adversely affect existing banking offices. On the contrary, it has been shown that the establishment of an additional banking office which provides more convenient service increased the loaning and deposit potential in the area in which it is located.

In short, the relocation of the main office of the Prospect Park National Bank will not harm, and indeed may help, the other banks already located in Wayne Township.

It is clear from all of the foregoing, and the Comptroller so finds, that the proposed relocation of the main office of Prospect Park National Bank is in all ways bona fide; that it is a prudent and necessary step to enable the applicant bank to continue serving both its shareholders and its depositors; that it will serve the public interest by establishing a banking office in Wayne Township where additional banking facilities are needed; that existing banks in the area will not be adversely affected; and that the application of the Prospect Park National Bank to relocate its main office from 124 Haledon Avenue in Prospect Park to Hamburg Turnpike in Wayne Township should be approved.

The bank has also applied to retain its office at 124 Haledon Avenue, Prospect Park, as a branch following the relocation of the main office. This retention will not entail any capital outlay by the bank since it already has a banking building. In addition, the applicant bank is quite anxious to be

able to continue to serve its customers in Prospect Park who would find this facility the more convenient. Of particular concern to the bank are senior citizens, who comprise 20 percent of the population of Prospect Park, and employees of the many small service and retail establishments in Prospect Park who cash their payroll checks at this office. The bank has stated without contradiction that 4.2 percent of its total deposits, or $4.5 million, are from residents of Prospect Park, and that 3.9 percent of its total mortgage loans, or $1,406,000 are made to residents of Prospect Park. Although the percentage amounts are small, the dollar amounts are substantial enough to warrant the maintenance of a banking facility in Prospect Park. The bank, of course, would have the right to close this branch at any time the branch was deemed economically unfeasible simply by a resolution of the bank's board of directors and without the Comptroller's approval. The Comptroller finds, therefore, that the Prospect Park National Bank should be allowed following its main office relocation to retain its branch at 124 Haledon Avenue in the Borough of Prospect Park, and this application will be approved. The approval of the main office relocation, however, is in no way contingent upon the approval of this branch application or upon the bank actually establishing and operating such a branch.

The protestants have made two principal contentions: First, that the main office relocation will not be bona fide (a) because a majority of the deposits of the Prospect Park National Bank are not located in Wayne and will not be located there

following the move, and (b) because the transfer of the major administrative functions of the bank to the new office does not necessarily determine that this office will be the main office; and second, that, even if the main office relocation is bona fide, it is not authorized by the provisions of the National Bank Act relating to main office relocations, 12 U.S.C. §30, when coupled with the section of that Act relating to branches, 12 U.S.C. §36, and the portions of New Jersey law incorporated into this latter section.

The transcript of the informal administrative hearing on these applications contains a great deal of confusion on the subject of relocating deposit accounts. Before 1966, Prospect Park National Bank had only one office, the main office which it now seeks to relocate. In 1966, it merged with the Peoples Bank of Hawthorne and retained the acquired bank's main office as a branch. All accounts opened at the Prospect Park office, whether before or after 1966, are attributed by the applicant for accounting purposes to its Prospect Park office no matter where the depositor may live and/or where he may do the majority of his banking transactions. For purposes of its relocation application the bank established that $17 million of its present deposits belonged to customers with addresses in the proposed primary service area in Wayne Township. If these accounts are transferred to the Wayne office for accounting purposes this will leave $73 million attributable to the Prospect Park office, even though residents of Prospect Park have only a total of $4.5 million in deposits with the bank. From these figures,

the protestants apparently argue that since the bank for accounting purposes will leave a greater amount of deposits with the Prospect Park office than it transfers to its Wayne office, the Wayne office cannot be a main office.

This argument appears frivolous, but the protestants have pressed it with such seeming earnestness that a brief discussion appears warranted. First, the power of a national bank to relocate with the Comptroller's approval its main office pursuant to 12 U.S.C. § 30 is in no way circumscribed by a requirement that a particular number of accounts be transferred. Second, there is no way to distinguish the main office of a bank from its branches by the number, size, or percentage of deposit accounts, or the addresses of the depositors. If plaintiffs contentions were accepted, the present main office of Prospect Park could not be its main office because only 4.2 percent of its deposit accounts belong to customers with Prospect Park addresses. Finally, even if the protestants' theory were acceptable, the record in this case shows that the Prospect Park National Bank already has more deposits generated from Wayne than from Prospect Park.[1]

Protestants are correct in contending that the office which the Prospect Park National Bank pro-

1. Equally meritless is protestants' apparent contention that the main office of a bank must have more area in floor space than a branch office. There is no such requirement in the statutes or elsewhere. Many banks, including the protestant New Jersey Bank & Trust Co., have branches larger than their certified main office.

poses to establish in Wayne will not be its main office solely because the bank will transfer to that office the bank's principal administrative functions. The distinctions between a main office and a branch office are bottomed primarily on various sections of the National Bank Act and include that a national bank has but one capital structure authorized to its main office, regardless of the number of branches; that no branch of a national bank has a board of directors; that residency requirements are imposed on the directors of a national bank in relation to the main office without regard to the location of branches; that the lending limitations of a national bank are based on the capital structure of a main office without regard to the number of branches; that no branch of a national bank has separate shareholders; that a branch may be closed at any time by a bank's board of directors without approval of either the shareholders or the Comptroller; and that a main office may be closed only by liquidation, merger, or receivership, all of which are complicated processes requiring approval of the bank's shareholders and/or authorization from the Comptroller. Protestants do not contest that the office which the Prospect Park National Bank proposes to establish in Wayne will be a bona fide main office under each of these criteria. Since these criteria are the important ones, the fact that the applicant bank will in this instance relocate its principal administrative functions to the main office is not controlling in determining whether the move is authorized. It is interesting to note in this regard that in protesting a proposed relocation of the First National Bank of Passaic County, two of these same protest-

ants, New Jersey Bank & Trust Co. and Ramapo Bank, are contending, contrary to their position here, that the relocation of the personnel and equipment who perform the principal administrative functions of the bank is necessary to establish a bona fide relocation.

Finally, the protestants' contentions of law are also without merit. The relevant section of the National Bank Act, 12 U.S.C. §30, authorizes the relocation of a national bank solely upon three conditions: (1) approval of the shareholders, (2) approval of the Comptroller, and (3) that the relocation be no further than 30 miles. This power is not limited by city boundaries, by state boundaries, by state law, or by any other factor. Nor is Section 30 limited by the branching statute, 12 U.S.C. § 36. The relevant provisions of the branching statute were passed as part of a general banking reform in 1933, or approximately fifty years after the passage of Section 30. Although some twenty five distinct banking matters were taken up in the Banking Act of 1933, the main office relocation section was not discussed by Congress or amended.

Plaintiff apparently contends, however, that even though Section 30 makes no reference to state law and that even though the branching statute was passed without any reference to Section 30, limitations of state law should somehow be read into other powers of a national bank, such as the power to relocate a main office, because Congress in discussing matters of branching in 1933 was concerned with making national banks at least com-

petitively equal in matters of branching with state banks. Indeed, Senator Glass, who was the principal proponent of the Banking Act of 1933, and a majority of the Senate favored statewide branching by national banks regardless of state law. Contrary to the protestants' arguments, therefore, this 1933 legislative history on matters of branching reemphasizes the basic premise of the National Bank Act, reaffirmed many times by the Supreme Court, that the National Bank Act constitutes by itself a complete system for the establishment and government of national banks without reference to state law unless Congress specifically so provides. It is one thing to contend as the Supreme Court found in First National Bank of Logan v. Walker Bank & Trust Co., 385 U.S. 252, 261 (1966), that "Congress intended to place national and state banks on a basis of 'competitive equality' insofar as branch banking was concerned." It is quite another matter to contend that other powers of national banks are restricted by reference to the law of each state concerning state banks unless Congress has specifically so provided. A bona fide main office relocation, as the Comptroller has found the present application to be, is not unlawful because a state may choose to restrict the power of a state bank to relocation by municipal boundaries, as the protestants contend the New Jersey law should be construed. The retention of a bona fide branch at the former main office site does not limit the main office relocation, and the protestants make no contention that either 12 U.S.C. § 36 or the law of New Jersey would prohibit the Prospect Park National Bank from establishing and operating an office in Prospect Park once

the bank's main office is legally established in Wayne. Since this relocation is authorized by the National Bank Act with or without the retention of the branch and without reference to state law, it is unnecessary to resolve the conflicting interpretations of the New Jersey law urged by the applicant and by the protestant.

Based on the foregoing, on the information gathered by this Office and submitted by the applicants and protestants, including the testimony and argument in the above-mentioned informal administrative hearing, and based upon the Comptroller's general knowledge of the banking industry as a whole, and of the banking and economic factors of northern New Jersey in particular:

1. The application of the Prospect Park National Bank of Prospect Park, New Jersey, to relocate its main office from 124 Haledon Avenue, Prospect Park, New Jersey, to the corner of Hamburg Turnpike and Duncan Lane, Wayne Township, New Jersey, is hereby approved whether or not the bank elects to retain a branch at the site of its old office in Prospect Park; and

2. The application of the Prospect Park National Bank to establish a branch in Prospect Park at 124 Haledon Avenue is approved, provided the bank accomplishes a genuine relocation of its main office as contemplated in the relocation

application submitted to and approved by the Comptroller.

s/ William B. Camp
WILLIAM B. CAMP
Comptroller of the Currency

Dated: April 8, 1969.

Addendum
Statutory Appendix

12 U.S.C.A. § 30, Change of name or location:

Any national banking association, with the approval of the Comptroller of the Currency, may change its name or change the location of the main office of such association within the limits of the city, town, or village in which it is situated. Any national banking association, with the approval of the Comptroller of the Currency, may change the location of the main office of such association to any other location outside the limits of the city, town, or village in which it is located, but not more than thirty miles distant, by the vote of shareholders owning two-thirds of the stock of such association. A duly authenticated notice of the vote and of the new name or location selected shall be sent to the Comptroller of the Currency; but no change of name or location shall be valid until the Comptroller shall have issued his certificate of approval of the same. As amended Sept. 8, 1959, Pub. L. 86-230, § 3, 73 Stat. 457.

12 U.S.C.A. § 36, Branch Banks

The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

(a) A national banking association may retain and operate such branch or branches as it may have had in lawful operation on February 25, 1927, and any national banking association which continuously maintained and operated not more than

one branch for a period of more than twenty-five years immediately preceding February 25, 1927, may continue to maintain and operate such branch.

(b) (1) A national bank resulting from the conversion of a State bank may retain and operate as a branch any office which was a branch of the State bank immediately prior to conversion if such office--

(A) might be established under subsection (c) of this section as a new branch of the resulting national bank, and is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank;

(B) was a branch of any bank on February 25, 1927; or

(C) is approved by the Comptroller of the Currency for continued operation as a branch of the resulting national bank.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the national bank) resulting from the conversion of a national bank would be prohibited by the law of such State from retaining and operating as a branch an identically situated office which was a branch of the national bank immediately prior to conversion.

Addendum

(2) A national bank (referred to in this paragraph as the "resulting bank"), resulting from the consolidation of a national bank (referred to in this paragraph as the "national bank") under whose charter the consolidation is effected with another bank or banks, may retain and operate as a branch any office which, immediately prior to such consolidation, was in operation as:

(A) a main office or branch office of any bank (other than the national bank) participating in the consolidation if, under subsection (c) of this section, it might be established as a new branch of the resulting bank, and if the Comptroller of the Currency approves of its continued operation after the consolidation;

(B) a branch of any bank participating in the consolidation, and which, on February 25, 1927, was in operation as a branch of any bank; or

(C) a branch of the national bank and which, on February 25, 1927, was not in operation as a branch of any bank, if the Comptroller of the Currency approves of its continued operation after the consolidation.

The Comptroller of the Currency may not grant approval under clause (C) of this paragraph if a State bank (in a situation identical to that of the resulting national bank) resulting from the consolidation into a State bank of another bank or banks would be prohibited by the law of such State from retaining and operating as a branch

an identically situated office which was a branch of the State Bank immediately prior to consolidation.

(3) As used in this subsection, the term "consolidation" includes a merger.

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. In any State in which State banks are permitted by statute law to maintain branches within county or greater limits, if no bank is located and doing business in the place where the proposed agency is to be located, any national banking association situated in such State may, with the approval of the Comptroller of the Currency, establish and operate, without regard to the capital requirements of this section, a seasonal agency in any resort community within the limits of the county in which the main office of such association is located, for the purpose of receiving and paying out deposits, issuing and cashing checks

and drafts, and doing business incident thereto: Provided, That any permit issued under this sentence shall be revoked upon the opening of a State or national bank in such community. Except as provided in the immediately preceding sentence, no such association shall establish a branch outside of the city, town, or village in which it is situated unless it has a combined capital stock and surplus equal to the combined amount of capital stock and surplus, if any, required by the law of the State in which such association is situated for the establishment of such branches by State banks, or, if the law of such State requires only a minimum capital stock for the establishment of such branches by State banks, unless such association has not less than an equal amount of capital stock. As amended July 15, 1952, c. 753, § 2(b), 66 Stat. 633; Sept. 28, 1962, Pub. L. 87-721, 76 Stat. 667.

(d) The aggregate capital of every national banking association and its branches shall at no time be less than the aggregate minimum capital required by law for the establishment of an equal number of national banking associations situated in the various places where such association and its branches are situated.

(e) No branch of any national banking association shall be established or moved from one location to another without first obtaining the consent and approval of the Comptroller of the Currency.

(f) The term "branch" as used in this section

shall be held to include any branch bank, branch office, branch agency, additional office, or any branch place of business located in any State or Territory of the United States or in the District of Columbia at which deposits are received, or checks paid, or money lent.

(g) This section shall not be construed to amend or repeal sections 601-605 of this title, authorizing the establishment by national banking associations of branches in foreign countries, or dependencies, or insular possessions of the United States.

(h) The words "State bank," "State banks," "bank," or "banks," as used in this section, shall be held to include trust companies, savings banks, or other such corporations or institutions carrying on the banking business under the authority of State laws. R.S. § 5155; Feb. 25, 1927, c. 191, § 7, 44 Stat. 1228; June 16, 1933, c. 89, § 23, 48 Stat. 189, 190; Aug. 23, 1935, c. 614, § 305, 49 Stat. 708.

NEW JERSEY STATUTES ANNOTATED

N.J.S.A. 17:9A-19 Branch Offices; locations; capital requirements

A. Any bank or savings bank may, pursuant to a resolution of its board of directors or board of managers, establish and maintain branch offices, subject to the conditions and limitations of this article.

B. No bank or savings bank shall establish or maintain a branch office which is located outside the municipality in which it maintains its principal office; except that a bank or savings bank may establish and maintain a branch office or offices anywhere in the same banking district as that in which it maintains its principal office:

(1) When such bank is a receiving bank as defined in section 132 or a receiving savings bank as defined in section 205, and each proposed branch will be established at a location occupied by the principal office or a branch office of a merging bank, as defined in section 132; or a merging savings bank, as defined in section 205; or

(2) when each proposed branch will be established at a location occupied by the principal office or a branch office of a banking institution in liquidation or in contemplation of liquidation; or

(3) when each proposed branch will be estab-

lished in a municipality in which no banking institution has its principal office or a branch office; except that, when a municipality has a population of 7,500 or more, and no banking institution has its principal office therein, a bank or savings bank may establish and maintain a branch office or offices in such municipality notwithstanding the presence therein of one or more branch offices of one or more banking institutions.

C. No bank shall hereafter establish a branch office unless its capital stock and surplus shall at least equal the minimum capital stock and surplus required by section 4 on the organization of a bank to transact business at the location occupied by the principal office of the bank proposing to establish such branch office, plus at least $100,000.00 of capital stock for each branch office maintained or proposed to be established by such bank.

D. No savings bank shall hereafter establish a branch office unless its surplus shall at least equal the minimum capital deposits required by section 8 on the organization of a savings bank to transact business at the location occupied by the principal office of the savings bank proposing to establish such branch office, plus at least $100,000.00 of surplus for each branch office maintained or proposed to be established by such savings bank.

E. Nothing in this section shall affect the continued maintenance of any branch office lawfully in operation on the effective date of this act.

F. For the purposes of this article and of articles 21 and 31, 3 banking districts are hereby established in this State, to be known respectively as the first banking district, the second banking district and the third banking district. The first banking district shall consist of the counties of Bergen, Essex, Hudson, Morris, Passaic, Sussex and Warren. The second banking district shall consist of the counties of Hunterdon, Mercer, Middlesex, Monmouth, Somerset and Union. The third banking district shall consist of the counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Ocean and Salem.

N.J.S.A. 17:9A-22. Change of principal or branch office; application; approval

A. A bank or savings bank may change the location of its principal office or of a branch office to a location within the same municipality in which such principal office or such branch office is located on filing an application therefor in the department and obtaining the approval of the commissioner.

B. If it shall appear from the application, or if the commissioner shall find from such proof as he may require, or from such investigation as he may cause to be made, that the area which would be served by such office after its change in location would not be substantially different from the area theretofore served by such office, he shall approve the application.

C. If it shall appear to the commissioner, from the application, or from such proof as he may

require, or from such investigation as he may cause to be made, that the proposed location will be so far removed from the place then occupied by such principal office or by such branch office that the area which would be served by such office after its change in location would be substantially different from the area theretofore served by it, he shall not approve such application unless, after such investigation or hearing, or both, as the commissioner may determine to be advisable, he shall find that the interests of the public will be served to advantage by such change in location, and that conditions in the locality to which removal is proposed afford reasonable promise of successful operation.

D. No bank shall change the location of its principal office pursuant to subsection C of this section unless, following the approval of the commissioner, it shall amend its certificate of incorporation to effect such change. L. 1948, c. 67, p. 200 § 22.

N.J.S.A. 17:9A-23. Interchange of principal and branch offices

A bank or savings bank may, without satisfying the requirements of Section 22, [1] change the location of its principal office to a location then occupied by a branch office maintained by it. After such a change, the bank or savings bank

1. Section 17:9A-22

may maintain a branch office at the location formerly occupied by its principal office, or it may discontinue business at such location. Such a bank or savings bank shall file a certificate of such change in the department within one week from the date such change is made. A change in location effected pursuant to this section shall not be subject to the limitations imposed by subsections C or D of section 19.[2] L. 1948, c. 67, p. 200, § 23: L. 1952, c. 220, p. 754, § 2.

2. Section 17:9A-19

SUPREME COURT, U. S.

Nos. 374, 406

AUG 17 1970

E. ROBERT SEAVER, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1970

THE RAMAPO BANK AND BROADWAY BANK AND TRUST COMPANY, PETITIONERS

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, AND PROSPECT PARK NATIONAL BANK

JAMES C. BRADY, JR., COMMISSIONER OF THE DEPARTMENT OF BANKING, STATE OF NEW JERSEY, PETITIONER

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, AND PROSPECT PARK NATIONAL BANK

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT CAMP IN OPPOSITION

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In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 376

THE RAMAPO BANK AND BROADWAY BANK AND TRUST COMPANY, PETITIONERS

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, AND PROSPECT PARK NATIONAL BANK

No. 406

JAMES C. BRADY, JR., COMMISSIONER OF THE DEPARTMENT OF BANKING, STATE OF NEW JERSEY, PETITIONER

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, AND PROSPECT PARK NATIONAL BANK

ON PETITIONS FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE RESPONDENT CAMP IN OPPOSITION

OPINIONS BELOW

The opinions of the Comptroller of the Currency (Pet. App. 67a–83a)[1] and of the district court (Pet. App. 28a–

[1] "Pet. App." refers to the appendix to the petition for a writ of certiorari in No. 376. "App." refers to the appendix in the

66a) are not reported. The opinion of the court of appeals (Pet. App. 4a–27a) is reported at 425 F. 2d 333.

JURISDICTION

The judgment of the court of appeals was entered on April 17, 1970. The petitions for a writ of certiorari were filed on July 10, 1970 in No. 376 and July 16, 1970, in No. 406. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the Comptroller of the Currency properly authorized a national bank to relocate its main office to a nearby suburb and to retain its former main office site as a branch.

STATUTE INVOLVED

The National Bank Act, as amended, provides in pertinent part:

12 U.S.C. 30:

> Change of name or location.
>
> Any national banking association, with the approval of the Comptroller of the Currency, may change its name or change the location of the main office of such association within the limits of the city, town, or village in which it is situated. Any national banking association, [with] the approval of the Comptroller of the Currency, may change the location of the main office of such association to any other location outside the limits of the city, town, or village in which it is located, but not more than thirty

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court of appeals, a copy of which has been lodged with the Clerk of this Court.

miles distant, by the vote of shareholders owning two-thirds of the stock of such association. * * *

12 U.S.C. 36:

Branch banks.

The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

* * * * *

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches: (1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State on State banks. * * *

STATEMENT

In May 1968, the respondent Prospect Park National Bank ("Prospect Bank") applied to the respondent Comptroller of the Currency for permission to relocate its main office from Prospect Park, New Jersey, to a site in the adjoining township of Wayne, New Jersey, a distance of 2.7 miles. The application

stated that the relocation was designed to relieve the severely overcrowded conditions in the main office, and to retain the banking business of the substantial number of the Prospect Bank's customers who were moving away from Prospect Park (an area of declining population and stagnant economy) to rapidly growing suburban areas such as Wayne (Pet. App. 5a–6a, 30a–33a, 67a–72a; App. 242a, 497a–508a, 278a–496a).* In a simultaneous, but separate, application, Prospect Bank sought permission to retain its Prospect Park site as a branch to service the substantial number of its customers (particularly senior citizens) who would continue to require banking facilities in Prospect Park (Pet. App. 6a–7a, 67a–68a; App. 503a–504a).

Several banks, including the petitioners Ramapo Bank and Broadway Bank & Trust Company, and the petitioner New Jersey Banking Commissioner, opposed the applications (Pet. App. 8a–9a). After a full hearing, in which the petitioners participated (Pet. App. 24a–26a), the Comptroller approved both applications (Pet. App. 67a–83a). He found that Prospect Bank's main office in Prospect Park was "intolerably crowded" and "poorly suited for operations of a bank the size of" Prospect Bank; that the economic condition of Prospect Park was stagnant or deteriorating; that a substantial number of Prospect Bank's customers were moving to nearby suburban areas such as Wayne; that Prospect Bank would not be justified in spending a substantial sum of money to enlarge its

* The population of Prospect Park has declined slightly since the Prospect Bank was chartered there forty-five years ago (Pet. App. 31a, 69a).

present inadequate building in Prospect Park or to erect a new building there; and that Wayne was a "vigorously growing suburban community" whose population had grown substantially, due, in large part, to the population movement from urban areas such as Prospect Park (Pet. App. 69a–72a).[3] The Comptroller also found that the Prospect Bank intended to relocate its principal administrative functions in Wayne, and that the Bank's new main office would comply with the legal requirements for main offices of national banks as set forth in the National Bank Act (Pet. App. 78a–79a; see also *infra*, fn. 4). Based upon the foregoing findings, the Comptroller concluded (Pet. App. 75a):

> * * * that the proposed relocation of the main office of Prospect Park National Bank is in all ways *bona fide;* that it is a prudent and necessary step to enable the applicant bank to continue serving both its shareholders and its depositors; that it will serve the public interest by establishing a banking office in Wayne Township where additional banking facilities are needed; that existing banks in the area will not be adversely affected; and that the application of the Prospect Park National Bank to relocate its main office from * * * Prospect Park to * * * Wayne Township should be approved.

The Comptroller also found that convenient banking facilities were needed by many persons in Prospect Park, particularly senior citizens and employees of the small retail and service establishments located

[3] Wayne's population grew from 11,882 in 1950 to 29,353 in 1960 and to 47,000 in 1968 (Pet. App. 70a).

there, and that the banking business remaining in Prospect Park was substantial enough to warrant the maintenance of a branch there (Pet. App. 75a–76a). Accordingly, the Comptroller approved the branch application, but stated that since the Prospect Bank "would have the right to close this branch at any time the branch was deemed economically unfeasible simply by a resolution of the bank's board of directors and without the Comptroller's approval," his approval of the main office relocation was "in no way contingent upon the approval of this branch application or upon the bank actually establishing and operating such a branch" (Pet. App. 76a).[4]

[4] The National Bank Act provides that a branch of a national bank may be closed at any time by a resolution of the board of directors, without approval of the Comptroller or the shareholders (12 U.S.C. 24, 71); by contrast, a national bank's main office may only be closed by liquidation, merger or receivership, all of which are complicated processes requiring approval of the bank's shareholders and/or authorization of the Comptroller (12 U.S.C. 181–186, 191–200, 215–215a, 1828(c)). The Comptroller also noted other distinctions between a main office and a branch as provided in the National Bank Act (Pet. App. 79a). Thus, a national bank has but one capital structure authorized to its main office and not to its branches (12 U.S.C. 51); the lending limitations of a national bank are based on the capital structure of its main office without regard to the number of branches the bank may have (12 U.S.C. 84); the directors of a national bank are required to live within a prescribed geographic proximity to the main office without regard to the location of branches (12 U.S.C. 72); and no branch of a national bank has a separate board of directors or separate shareholders (12 U.S.C. 52, 71, 71a). As the Comptroller stated, the protestants did "not contest that the office which the Prospect Park National Bank proposed to establish in Wayne will be a *bona fide* main office under each of these criteria" (Pet. App. 79a).

Petitioners thereafter brought this action in the district court against the Prospect Bank and the Comptroller, seeking a declaration that the Comptroller's approval of the Prospect Bank's applications was unlawful and an injunction against the establishment of "a competitive banking facility in Wayne" (Pet. App. 10a; App. 518a).[5] The plaintiff banks argued that "[w]hether the office to be established in Wayne is to be a main office or a branch is the crucial issue, as we see it" (App. 560a).

The district court upon reviewing in detail the record before the Comptroller, ruled that there was "no evidence which would support a conclusion that the proposed relocation of the main office of the Prospect Park National Bank is nothing but a mere subterfuge and that, in fact, what is being called the main office is actually a branch" (Pet. App. 53a), and that "there is ample evidence from the record before the Comptroller to justify his opinion that the office in Wayne would be a main office and not a branch" (Pet. App. 60a). The court also determined that the Comptroller's approval of the main office relocation was in accord with 12 U.S.C. 30, *supra*, pp. 2–3, "the controlling statute with respect to the establishment of a main office by a national bank," and that the branch banking restrictions in 12 U.S.C. 36, *supra*, p. 3, were inapplicable to the relocation. (Pet. App. 44a). The district court also noted that "there [was] no dispute as to the

[5] Another protestant, the New Jersey Bank, also filed suit in the district court, but did not prosecute an appeal from that court's adverse judgment (Pet. App. 5a).

fact that if the Prospect Park National Bank's main office were, pursuant to approval of the Comptroller, legally relocated in Wayne, New Jersey law would permit it to maintain a branch office in the municipality of Prospect Park" (Pet. App. 47a).

The court of appeals unanimously affirmed. In a comprehensive opinion, it held that "the Comptroller properly found that PPNB [Prospect Park National Bank] intends a *bona fide* move of its *main office* to Wayne," since (1) the relocated main office proposed by Prospect Bank was in accord with the "distinguishing characteristics" of a national bank's main office as set forth in the National Bank Act (see *supra*, fn. 4); (2) "prevailing economic conditions in Prospect Bank, as determined by the National Bank Examiner, the Regional Administrator, and the Comptroller, supported the relocation"; and (3) not only was there "no substance" in petitioners' claim that the relocation was a subterfuge to evade state banking laws, but "both the actions and intentions of the defendants were quite open and apparent" (Pet. App. 13a–17a). The court concluded that "'branching considerations are inapplicable to the main office relocation of a national bank" and that "the *bona fides* of the relocation is governed solely by the statutory provisions of Section 30 of the National Bank Act," with which the Prospect Bank's relocation application concededly complied (Pet. App. 21a, 13a).[6]

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[6] As the court of appeals noted, Section 30 "requires that the relocated office (1) be within 30 miles of the former main office, (2) that it be approved by a two-thirds vote of the shareholders, and (3) that it have the approval of the Comptroller of the Currency" (Pet. App. 13a, fn. 22).

The court of appeals also rejected petitioners' contention that "state law restrictions must be read into the National Bank Act whenever, as in the case of main office relocations, state and national banks are arrayed in competing positions" (Pet. App. 24a). Moreover, the court of appeals questioned petitioners' interpretation of State law, stating that "it is not clear from the face of [the New Jersey statutes] that a state bank would be precluded from entering into Wayne by moving its principal office" (Pet. App. 21a, fn. 34).[7] Finally, the court of appeals held that the record fully supported the district court's "extensive findings concerning the adequacy of the hearing afforded appellants and the completeness of the administrative record" (Pet. App. 24a–26a).

ARGUMENT

1. Petitioners' principal contention is that the Comptroller and the Prospect Bank, through the "clever" use of "labels," engaged in "a transparent maneuver" or "subterfuge" to "evade" and "circumvent state branching" laws by establishing a branch office in Wayne Township (Petition in No. 376, pp. 9, 11, 13, 15; Petition in No. 406, pp. 8, 10). Both the district court and the court of appeals, however, held that the administrative record amply supported the

[7] The court of appeals also noted petitioners' concession "that if the relocation of PPNB's main office is lawful, there is no legal impediment to PPNB's retaining, or creating, a branch office in Prospect Park" (Pet. App. 19a, fn. 31). As the court stated, this is because "there is no other bank currently conducting business" in Prospect Park (Pet. App. 8a).

Comptroller's finding, made after full hearing, that the Prospect Bank intended a *bona fide* relocation of its main office into Wayne, and not the establishment there, through a subterfuge, of a branch office. There is no occasion for further review of this factual determination which, as the Statement shows, was correct.

Contrary to petitioners' assertion (Pet. in No. 376, p. 7; Pet. in No. 406, pp. 8–11), the decision below does not conflict with *Marion National Bank of Marion* v. *The Van Buren Bank*, 418 F. 2d 121 (C.A. 7), in which the Seventh Circuit prohibited a relocation of a national bank's main office and establishment of its former main office as a branch. Unlike the present case, the district court in *Marion* found that the relocation was not *bona fide* but was a "subterfuge for what is essentially an attempt by an established bank * * * to establish a branch" where Indiana law did "not * * * permit an established banking institution to venture into a new market [by establishing a branch] if this new market is already served by other banking institutions" (Pet. in No. 376, n. 8, pp. 14–15). In sustaining the district court's injunction, the court of appeals obviously relied upon that finding, since it explained that its affirmance rested "solely upon the basis that the maneuver proposed involves creation of a branch which would not be authorized to state banks by the statute law of Indiana and is therefore not authorized for national banks by 12 U.S.C. § 36(c). If creation, or retention, of a branch were subtracted from the proposal, this reason for deeming it unlawful would fail" (418 F. 2d at 125).

In the present case, in contrast, both courts held that the relocation was not a subterfuge or maneuver designed to avoid State law limitations on branching, but was a *bona fide* relocation of the main office dictated by changing business conditions. Moreover, although in *Marion* the courts concluded that State law would have prohibited the bank from establishing a branch in the area to which its main office was to be moved, the Third Circuit in the present case stated that it "is not clear * * * that a bank would be precluded from entering Wayne by moving its principal office," an issue the court found it "unnecessary" to resolve (Pet. App. 21a, n. 34). Finally, in *Marion*, the court of appeals viewed the relocation of the main office and the establishment of a branch at the old office site as "a single indissoluble process" (418 F. 2d at 124); in the present case the Comptroller approved the relocation of the main office "whether or not the bank elects to retain a branch at the site of its old office in Prospect Park" (Pet. App. 76a, 82a).

There is thus no conflict on the question whether the Comptroller may authorize a national bank to move its main office when State law would prohibit the move as an impermissible attempt to establish a branch. Both circuits are in agreement that the Comptroller may permit a *bona fide* relocation of a main office; the Seventh Circuit in *Marion* expressly permitted the Comptroller to approve a proposal that "will not involve the creation or retention of a branch"

(418 F. 2d at 125).[7] The court of appeals in *Marion* agreed with the court of appeals in the present case that the relocation of a national bank depends upon Section 30 of the National Bank Act and does not "depend on state law" (*Marion*, 418 F. 2d at 123; present case, Pet. App. 22a).[8] Although the court of appeals in the present case stated that the Seventh Circuit in *Marion* had reached "a contrary result" (Pet. App. 20a), that comment may have reflected only the fact that the Seventh Circuit, concluding that the main office transfer was a subterfuge or maneuver, rejected the Comptroller's approval. In any event, even if the

[7] The bank in *Marion* subsequently moved its main office to the new location and, 13 days later, established a branch at its former main office site (Appellee William B. Camp's Opposition to Appellant's Motion for Injunction in court of appeals, filed May 5, 1970, p. 1; a copy of this document has been lodged with the Clerk). Thus, except for the fact that the original site of the main office was closed for 13 days, the result in the *Marion* case is consistent with the result here.

[8] The court below held that the Prospect Bank's relocation complied with the requirements of Section 30 of the National Bank Act governing relocations of main offices of national banks (Pet. App. 13a). Petitioner New Jersey Banking Commissioner contends, however, that Section 30 requires that all of the customer accounts be transferred to the new location (Pet. in No. 406, pp. 4-6). The court below properly rejected this contention, since there is "nothing in the language or history of Section 30 which requires the Comptroller to find that the bulk of customer accounts will be relocated with the main office before he is able to grant approval" (Pet. App. 16a). The court below further noted that "the economics of the Prospect Bank's relocation were fully consonant with the congressional purpose behind Section 30, *i.e.*, 'congressional recognition that relocation applications must naturally come from those parts of the country where population is rapidly changing or business is rapidly developing.' 17 Cong. Rec. 1350 (1886)" (Pet. App. 45a).

Third Circuit believed that its decision conflicted with *Marion*, there is in fact no conflict.

2. The court below correctly rejected petitioners' "competitive equality" argument, *i.e.*, the contention that "state law restrictions must be read into the National Bank Act whenever, as in the case of main office relocations, state and national banks are arrayed in competing positions" (Pet. App. 24a). This contention, as noted (*supra*, p. 11), rests on an interpretation of State law that the court below refused to accept.

"The National Bank Act constitutes 'by itself a complete system for the establishment and government of National Banks'" (*Dedrick* v. *Greaney*, 309 U.S. 190, 194; *Cook County Nat. Bank* v. *United States*, 107 U.S. 445, 448). This Court has uniformly held invalid State laws that without express Congressional sanction, would impair the ability of national banks to operate (*First Agricultural National Bank of Berkshire County* v. *State Tax Commission*, 392 U.S. 339; *Mercantile Nat. Bank* v. *Langdeau*, 371 U.S. 555, 558–559; *Franklin Nat. Bank* v. *New York*, 347 U.S. 373).

Congress has adopted State-law restrictions on national banks in certain explicitly defined and narrow circumstances. For example, in 12 U.S.C. 36, Congress has made State law limitations on branching applicable to national banks.[10] This Court, however, has pointed out that considerations of "competitive equality" apply only "insofar as branch banking was concerned." *First National Bank* v. *Walker Bank*,

[10] See also 12 U.S.C. 24 Eighth, 51, 85, 90, 92a, 214c, 371.

385 U.S. 252, 261. In *First National Bank in Plant City* v. *Dickinson*, 396 U.S. 122, 134, the Court held that the meaning of the term "branch" is to be determined as "a matter of federal law, having in mind the congressional intent that *so far as branch banking is concerned* 'the two ideas [unit banking and branch banking] shall compete on equal terms and only where the States [allow] their own institutions [to] have branches.'" [Emphasis added.]

Neither *Walker Bank* nor *Dickinson* dealt with the question of the relocation of a main office pursuant to Section 30 of the National Bank Act. Indeed, this Court in *Dickinson* pointed out that a "branch" is a banking place "apart from" the bank's "main office" or "chartered premises" or "chartered place of business". 396 U.S. at 135, 137. Thus, considerations of "competitive equality" do not apply to a case like the present one where the Prospect Bank made a *bona fide* relocation of its main office into Wayne, and did not establish a branch there.[11]

In any event, the issue does not warrant further review. The Comptroller received, and has now pending, only a few applications for the relocation of a main office and the establishment of a branch at the old main office site; and he does not anticipate that

[11] The court below noted (Pet. App. 22a):

"It is clear, insofar as congressional history is concerned, that nothing in the language of Section 30 or in the commentary generated by its passage in 1886, and amendment in 1959, permits the inference that state law was intended to govern the movement of national bank main offices. It is equally clear that when Congress enacted Section 36(c) in 1927, and substantially

the number of such applications will increase. The applications of the Prospect Bank which the Comptroller approved and which are at issue in this litigation arise from fairly unusual facts. Thus, there is no ground for petitioners' concern (Pet. in No. 376, p. 11; Pet. in No. 406, p. 7) that, if the decision below is permitted to stand, "most, if not all" of the various State law restrictions on branching "may be avoided" or that "a substantial amount of uncertainty" will exist regarding "state regulation of branch banking."

CONCLUSION

For the foregoing reasons, the petitions for writs of certiorari should be denied.

Respectfully submitted.

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AUGUST 1970.

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amended it in 1933, nothing was said concerning the incorporation of state banking laws into Section 30 [footnote omitted]." This statement answers petitioners' contention (Pet. in No. 376, p. 15; Pet. in No. 406, p. 6) that the restrictions of Section 36 should be read into the entirely different provisions of Section 30. As previously noted, the court of appeals in *Marion*, *supra*, similarly agreed that the propriety of a main office relocation under Section 30 "is not made to depend on state law" (418 F. 2d at 123).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 376

THE RAMAPO BANK and BROADWAY BANK AND TRUST COMPANY,

Petitioner,

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, and PROSPECT PARK NATIONAL BANK

No. 406

JAMES C. BRADY, Commissioner of the Department of Banking, State of New Jersey,

Petitioner,

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY OF THE UNITED STATES, and PROSPECT PARK NATIONAL BANK

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF FOR THE RESPONDENT, PROSPECT PARK NATIONAL BANK IN OPPOSITION

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BRIEF FOR THE RESPONDENT, PROSPECT PARK NATIONAL BANK IN OPPOSITION

Opinions Below

The opinions of the Comptroller of the Currency (Pet. App. 67a-83a)[1] and of the district court (Pet. App. 28a-66a are not reported. The opinion of the court of appeals (Pet. App. 4a-27a) is reported at 425 F. 2d 333, 1970.

Jurisdiction

The judgment of the court of appeals was entered on April 17, 1970. The petitions for a writ of certiorari were filed on July 10, 1970 and July 16, 1970. The jurisdiction of this Court is invoked under 28 U.S.C. 1245 (1).

Questions Presented

The Prospect Park National Bank, over a period of many years, conducted feasibility studies in an attempt to solve its problem to provide sufficient space at its main office for its customers to conduct their banking affairs and for its employees to perform their duties. After full consideration of the results of such studies, it was determined that it would not be prudent to rebuild and expand at the location of its main office.

A parcel of ground was obtained 2.7 miles from its main office in Wayne, New Jersey, and an application was made under 12 U.S.C. § 30 to move its main office to such location. At the same time a separate application was filed under 12 U.S.C. § 36 to permit the establishment of a branch at its old main office. The results of the feasibility

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[1] "Pet App." refers to the appendix to the petition for a writ of certiorari in No. 376. The New Jersey Banking Commissioner had filed a separate petition for a writ of certiorari in No. 406. "App." refers to the appendix in the court of appeals, a copy of which has been lodged with the Clerk of this Court.

studies referred to above were set forth in full in said applications.

The Petitioners, state chartered banks, and the Commissioner of Banking of the State of New Jersey objected contending that the applications were not bona fide, that Prospect Park National Bank did not intend to move its main office and further that there was no similar provision in the state statutes enabling state banks to make such a move. Their contention was that Prospect Park National Bank should not be permitted to make such a move because, in reality, the move constituted a subterfuge for branching, and the establishment of a branch in Wayne was prohibited under the state law incorporated into federal law by the various sections of 12 U.S.C. § 36 and by the principle of competitive equality.

The questions presented, therefore, are:

(1) Were the applications of Prospect Park National Bank to move its main office 2.7 miles from Prospect Park to Wayne, New Jersey, and to retain its old main office as a branch, bona fide or a subterfuge for branching; and was the determination by the Comptroller, the district court and the circuit court that they were, indeed, bona fide and not a subterfuge for branching, correct or incorrect?

(2) Congress specifically provided in 12 U.S.C. § 36 that state branching restrictions must be complied with by a national bank before it can branch. 12 U.S.C. § 30 does not provide that state restrictions must be complied with by a national bank before it can relocate its main office. If Prospect Park National Bank's applications were bona fide, must it, nevertheless, under some principle of competitive equality, comply not only with state restrictions as to branching but also with state restrictions as to relocation of its main office?

Statute Involved

The National Bank Act, as amended, provides in pertinent part:

12 U.S.C. 30. Change of name or location.

Any national banking association, with the approval of the Comptroller of the Currency, may change its name or change the location of the main office of such association within the limits of the city, town, or village in which it is situated. Any national banking association, (with) the approval of the Comptroller of the Currency, may change the location of the main office of such association to any other location outside the limits of the city, town, or village in which it is located, but not more than thirty miles distant, by the vote of shareholders owning two-thirds of the stock of such association. * * *

12 U.S.C. 36. Branch banks.

The conditions upon which a national banking association may retain or establish and operate a branch or branches are the following:

* * *

(c) A national banking association may, with the approval of the Comptroller of the Currency, establish and operate new branches:

(1) Within the limits of the city, town or village in which said association is situated, if such establishment and operation are at the time expressly authorized to State banks by the law of the State in question; and

> (2) at any point within the State in which said association is situated, if such establishment and operation are at the time authorized to State banks by the statute law of the State in question by language specifically granting such authority affirmatively and not merely by implication or recognition, and subject to the restrictions as to location imposed by the law of the State or State banks. * * *

Statement of the Case

Prospect Park National Bank commenced business in the Borough of Prospect Park. Prospect Park is the smallest municipality in Passaic County, New Jersey, and at the time the bank was chartered, it had a population of 5,909 people. At the time the application was filed in the instant case, the population of Prospect Park had declined to 5,180 people. It is a municipality consisting of four-tenths of a square mile.

To insure growth of the bank despite the declining population of Prospect Park, the management of the bank over the years, continually sought to alter the local nature of the bank. Today it serves residents and business throughout the entire northern New Jersey area, and at the time of filing of the application to move its main office, only 4.2% of its total deposits came from residents of Prospect Park. Because of the success of the management in altering the local nature of the bank, it grew rapidly and its total resources at the time the application was filed exceeded $130,000,000.00.

To accommodate this growth it was necessary to expand its physical plant from time to time. Prospect Park National Bank began business in a remodeled three story frame house. Adjoining homes were purchased over the

years and by a process of remodeling and construction of additions the present structure came into being. The result of this type of expansion is that the building is poorly suited for an operation the size of Prospect Park National Bank.

By 1960 it became apparent that additional space was needed to accommodate customers and employees, because both the public area and the working area were intolerably congested. The Board of Directors engaged in a long-range study of the problem. Upon completion of the lengthy and exhaustive study, the Board of Directors, noting the lack of growth potential in the area, the congestion and crowded conditions at its existing location, the excessive cost of expanding and rebuilding at the existing location (in excess of 1½ million dollars) and the natural shift of population and business to the suburban areas, concluded that prudent management dictated the relocation of its main office.[2]

Accordingly, applications were filed with the Comptroller of Currency for permission to relocate its main office a distance of 2.7 miles to a location in Wayne, New Jersey, which is actually on an extension of the same road on which its Prospect Park office is located. An application was also filed to establish a branch in Prospect Park at its old office.

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[2] The applications submitted by Prospect Park National Bank contains photographs of the various stages of expansion of its office at Prospect Park which graphically demonstrate the difficulties the Bank had with its physical facilities. There was also filed with the application voluminous details showing the studies made by the bank as to its need for additional facilities and the affect on its operations because of the lack of these facilities. See App.244a-497a.

A National Bank Examiner was assigned by the Comptroller's Office to investigate the applications and the following is an excerpt from his report recommending approval:

> "The present head office building located in Prospect Park is approximately forty-three years old. Lobby space and parking space is very limited and working space is inadequate for the volume of business transacted. The bank has received estimates to construct a new building on their present head office site at a minimum cost of $1,500,000. However, they would have to utilize approximately seventy-five percent of their parking area. Management estimates that they have lost approximately $4,000,000 to $5,000,000 in existing and potential deposits in the last three to four years due to this overcrowded condition." App. 252a

The competing banks as well as the Commissioner of Banking and Insurance of New Jersey requested a hearing on Prospect Park National Bank's applications. At the conclusion of the hearing, the Regional Administrator recommended approval of the application, the Director of the Comptrollers Bank Organization Division and two Deputy Comptrollers of the Currency recommended approval. The Comptroller, on April 8, 1969 in a ten page written opinion, approved the two applications. The Comptroller agreed that Prospect Park National Bank would not be justified in spending a substantial sum of money to enlarge its existing building or to build a new one at that location. The Comptroller found:

> "The proposed relocation of the main office of the Prospect Park National Bank is in all ways bona fide; that it is a prudent and necessary step

> to enable the applicant bank to continue serving both its shareholders and its depositors; that it will serve the public interest by establishing a banking office in Wayne Township where additional banking facilities are needed; that existing banks in the area will not be adversely affected; and that the application of the Prospect Park National Bank to relocate its main office from 124 Haledon Avenue in Prospect Park to Hamburg Turnpike in Wayne Township should be approved."

The Comptroller also approved Prospect Park National Bank's application to retain its old office as a branch and concluded that the many senior citizens and employees of small retail and service establishments located in Prospect Park could use convenient banking facilities.[3]

The Petitioners appealed the decision of the Comptroller to the District Court alleging in Paragraphs 23 through 26 of their complaint as follows:

> "23. Approval of defendant Prospect Park's applications by defendant Comptroller was arbitrary, capricious, an abuse of discretion, and not in accordance with the law.
>
> "24. Approval of defendant Prospect Park's applications by defendant Comptroller was contrary to plaintiffs' Constitutional rights to due process of law.

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[3] The Petitioners *have conceded that the* establishment of a branch in Prospect Park does not violate state requirements on branching. The only banking establishment in Propect Park is that of the Respondent, Prospect Park National Bank. It is also conceded that the Repsondent, Prospect Park National Bank, meets all other requirements of 12 U.S.C. § 30. Petitioners argue that the 2 applications although separately proper become improper when filed together.

"25. Approval of defendant Prospect Park's applications by defendant Comptroller was in excess of the limitations of 12 U.S.C. § 30 and 12 U.S.C. § 36 (c).

"26. Approval of defendant Prospect Park's applications by defendant Comptroller was unwarranted by the facts."

Judge Shaw, after reviewing the voluminous record, concluded:

> "In this particular case, I find no evidence which would support a conclusion that the proposed relocation of the main office of the Prospect Park National Bank is nothing but a mere subterfuge." (Pet. App. 53a)

Judge Shaw then went on to sustain the decision of the Comptroller. He stated,

> "There is ample evidence from the record before the Comptroller to justify his opinion that the office in Wayne would be a main office and not a branch." (Pet. App. 60a)

Judge Shaw's opinion was appealed to the Third Circuit Court of Appeals.

The Court of Appeals (Biggs, Kalodner and Freedman, J.J.) unanimously affirmed the decision of Judge Shaw. The Petitioners argued before the Third Circuit as they do again here that Prospect Park National Bank and the Comptroller were engaged in some scheme to evade the restrictions of state law. In regard to this argument, Judge Kalodner, speaking for the Court, stated:

> "We find equally without substance the Appellants' contention that the Comptroller and Prospect Park National Bank jointly engaged in a subterfuge to evade state branching laws." (Pet. App. 17a)

Concluding the courts findings on the question of the bona fideness of the application, Judge Kalodner stated:

> "On review of the record, we are of the opinion that it amply supports the District Court's critical findings that the Comptroller's approval of Prospect Park National Bank's applications were not arbitrary, capricious or an abuse of discretion; and that such approval was bona fide, free of collusion and in compliance with the applicable provisions of Section 30, which we hold to be controlling." (Pet. App. 26a-27a)

In response to the Petitioners' contention that the bona fides of a main office relocation when joined by a branch retention must be measured against state branching laws and policy, the Court said:

> ". . . We are of the opinion that branching considerations are inapplicable to the main office relocation of a national bank and that the bona fides of the relocation is governed solely by the statutory provisions of Section 30 of the National Banking Act." (Pet. App. 21a)

In response to the Petitioners' contention that regardless of the bona fides of the Prospect Park National Bank's applications, the doctrine of "competitive equality" between state and national banks requires that Section 30 be read together with and limited by the provisions of Section 36 (c) 2 the court said that

> "It is clear, insofar as congressional history is concerned, that nothing in the language of Section 30 or in the commentary generated by its passage in 1886, and amended in 1959, permits the inference that state law was intended to govern the movement of national bank main offices." (Pet. App. 22a)

The court after considering additional arguments of Petitioners in support of their "competitive equality" argument concluded:

> "In light of the foregoing we find without substance appellants contention that state law restriction must be read into the National Bank Act whenever, as in the case of main office relocations, state and national banks are arrayed in competing positions." (Pet. App. 24a)

Finally, the court of appeals held that the record fully supported the district court's "extensive findings concerning the adequacy of the hearing afforded appellants and the completeness of the administrative record" and sustained the District Court's decision. (Pet. App. 24a-27a)

Reasons for Denying the Writ

The reasons advanced by the Petitioners for granting the writ are essentially:

(1) The decision below in the Third Circuit Court of Appeals conflicts with that of the Seventh Circuit Court of Appeals in the case of *Marion National Bank of Marion* v. *The Van Buren Bank*, 418 F. 2d 121 (1969).

> (See argument No. 1 on page 7 of Brief of Petitioner Ramapo and No. C on page 8 of the Brief of Petitioner Brady)

(2) The principle of compeititve equality developed in the *Walker* case and *Dickinson* case and the legislative history of 12 U.S.C. 36 (c) (2) requires the limitations of Section 36 to be read into Section 30.

(See argument No. 2 on page 9 of Brief of Ramapo and A on page 4 of Brief of Brady)

(3) The case is an important one. Petitioner Brady makes this a separate point in his brief (page 7) and it is incorporated in argument No. 2 of Petitioner Ramapo.

Phrase the arguments as they will, essentially the Petitioners' arguments are based on the contention that the respondent Prospect Park National Bank engaged in a subterfuge to create a new branch and was not in fact relocating its main office. The bona fidedness of Prospect Park National Bank's applications has been established by each tribunal below and the legal arguments advanced by the Petitioners before this court have already been fully argued before the district court and the circuit court of appeals and clearly and concisely disposed of by each court. We shall once again briefly consider each of the contentions of the Petitioners.

(1) Conflict in Decisions

The decision below and the decision in the *Marion* case are not in conflict. It is true that the result in each case is different; however, the rationale in each case is the same. In other words, the common thread in each case is that if the move of a main office is bona fide, branching restrictions of the State do not apply. If, however, the move of the main office is not bona fide, then branching restrictions do apply. Therefore, in the instant case, the Courts below determined the move to be bona fide and affirmed the decision of the Comptroller, whereas in the

Marion case the Court found the move to be a subterfuge and not bona fide, and found the action of the Comptroller to be arbitrary and capricious. Both Courts applied the same principle of law, but because of the difference in the facts in each case the application of the law led to a different result.

To demonstrate the similarities and the differences in the instant case and the *Marion* case, we will briefly consider the facts in each case and the application of the law to these facts by each Court.

The Circuit Court in the *Marion* case did not recite the facts of the case in its opinion, instead it appears that it relied on the findings of fact made by the District Court and accepted them without discussion. The District Court reports the following to be the facts in the case: The Van Burean Bank, a state bank, was controlled by a group of persons who had acquired seven other state banks in northeastern Indiana. In August 1963 this group sough to move each of the banks under their control into a county seat. In 1964 they sought to establish a branch of one of its banks just outside the city limits of Marion, and the State Commissioner denied the application. In January 1966 this group sought a new State charter in Marion to be located on property controlled by the group. This application for a new charter was also denied by the State. This group, being frustrated in their attempt to place a bank in Marion, thereafter went to the Regional Administrator and indicated that they were interested in converting all of their banks into National Banks and that they were interested in moving the Van Buren Bank into Marion. Applications were filed to accomplish all of these events. A National Bank Examiner was directed to investigate the application of the Van Buren Bank, to

move its main office to Marion, and twice he recommended that the application be denied. The Comptroller, nevertheless, approved the applications.

The District Court, after considering all of the facts, stated: "While the physical facilities and contemplated operating characteristics of the new facility in Marion are significant, they do not require this court to blind itself to the total scope of the activities here involved, nor to disregard their historical background." (App. 123a)

The District Court then went on to say: "The clear preponderance of the evidence in this case is that the plan which Van Buren Bank and the Comptroller characterize as a 'relocation' of the 'main office' in Marion coupled with a 'branch' into Van Buren is in fact intende as a subterfuge for what is essentially an attempt by an established bank in Van Buren, Indiania, to establish a branch in Marion." (App. 124a)

The Court stated: ". . . a careful examination of the law and cases applicable convinces this court that there is only one final determination which is directly relevant, *i.e.*, does the proposed action, taken as a whole and under the facts and circumstances of each case, constitute a valid exercise of the discretion of the Comptroller of the Currency or does it constitute a scheme and subterfuge intended to circumvent the Congressional purpose. No two cases are the same. Each must stand or fall on its own circumstances." (App. 130a, 131a)

It concluded: "This court's findings are limited to the facts and circumstances of *this* case; and in this case Van Buren Bank's proposed 'relocation' is a subterfuge for an attempt to branch, and the Comptroller's approval in *this* case is therefore subject to the limitations upon

branching set out in 12 U.S.C. Section 36 (c)." (App. 133a) Note that the Court, by providing emphasis under the word "*this*", made it clear that it was limiting its decision only to the case under consideration because of its findings of fact.

With this background in mind, it is clear that the Circuit Court accepted completely the findings of subterfuge made by the District Court. It said: "As we see it the issue is whether Indiana law would affirmatively permit a state bank to branch in like manner under like circumstances." p. 123. The Circuit Court, therefore, considered the case only as a branching case.

Compare the facts in the *Marion* case with those in the instant case and the distinction is immediately apparent. In the instant case the applications were preceded by a thorough study of the physical problems of the bank building by architects. Studies were made of population trends. Analysis were made of location of customers. Statistics were developed to show the loss of deposits unless affirmative action was taken.[4] In the instant case the field examiner assigned to investigate the applications recommended approval, whereas in the *Marion* case the field examiner on two separate occasions recommended that approval be denied. In the instant case the Regional Administrator, the Director of the Comptrollers Bank Organization Division, the two Deputy Comptrollers of the Currency, the District Court and the Circuit Court found that the applications were bona fide and not a subterfuge to branch. In the *Marion* case, both the District Court and the Circuit Court found that the applications were not bona fide and that they were a subterfuge to engage in branching.

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[4] See voluminous material submitted with application. (App. 244a-497a)

With these facts in mind, we can compare what the Courts in the Seventh Circuit said about the applicable law with what was said by the Courts in the Third Circuit. In the Seventh Circuit, the District Court said: ". . . a careful examination of the law and cases applicable convinces this court that there is only one final determination which is directly relevant, *i.e.* does the proposed action, taken as a whole and under the facts and circumstances of each case, constitute a valid exercise of the discretion of the Comptroller of the Currency, or does it constitute a scheme and subterfuge. . . ." (App. 130a, 131a) In the Third Circuit, the District Court said, ". . . the only issue here that merits consideration is whether in fact, as established by the record, the relocated main office would be in fact a main office of the Prospect Park National Bank and not a branch . . ." (Pet. App. 60a) Is it not true then that both District Courts conceived their duty to be identical? The Court of Appeals for the Seventh Circuit, having accepted the finding of the District Court that the application was a subterfuge, stated, "We affirm the judgment solely upon the basis that the maneuver proposed involves creation of a branch which would not be authorized to state banks by the state law of Indiana and is, therefore, not authorized for national banks by 12 U.S.C. Section 36 (c)." p. 125. Had the court determined that the relocation of the main office was bona fide it would have sustained the Comptroller's decision. The Court said: "Relocation of a national bank is permitted in certain circumstances and with the approval of the Comptroller, by 12 U.S.C. Section 30. The propriety of the move is not made to depend on state law." p. 123. The Court of Appeals for the Third Circuit stated, "On review of the record, we are of the opinion that it amply supports the District Court's critical findings that the Comptroller's approval

of Prospect Park National Bank was not arbitrary, capricious or an abuse of discretion; and that such approval was bona fide, free of collusion and in compliance with the applicable provisions of Section 30 which we hold to be controlling." (Pet. App. 26-27a) In summary then, are not the courts in both circuits saying, the original determination as to whether or not an application of a national bank to move its main office is bona fide or a subterfuge for branching is up to the Comptroller—if the Comptroller has not abused his discretion in determining the application to move a main office to be bona fide, the provisions of 12 U.S.C. Section 30 apply and his decision will not be disturbed—if the Comptroller has abused his discretion in determining the application to be bona fide and the application is in fact to permit a branch then the court will set aside this determination and the court will apply the restrictions of 12 U.S.C. Section 36 (c).

This is, indeed, the proper view to take of the cases in both circuits. Each of the courts considered the cases of *Traverse City State Bank* v. *Empire National Bank,* 228 F. Supp. 984 (W. D. Mich. 1964) and the *Merchants and Miners Bank* v. *Saxon,* Unreported Opinion of Kent, C. J. No. 1042, W. D. Mich., N. D. July 13, 1966. The District Court in the Seventh Circuit did not say it disagreed with the holding of these two cases, it merely stated that in these two cases the court apparently felt the applications were bona fide and hence the court in these instances correctly determined that state limitations on branching did not apply to national banks but that in the case which it had before it for determination, the application was not bona fide and, therefore, the state limitations on branching did apply. The Court of Appeals for the Seventh Circuit apparently did not consider, at least in its reported opinion, the *Merchants* case, and believed the

Traverse City case did not apply because it was decided prior to the *Walker Bank* case. In view of the fact that the Court of Appeals believed the case before it to be one of branching, its reliance on the *Walker* case, which dealt solely with branching, is understandable.

It is not every difference in result in the decisions of the Circuit Court of Appeals that should be resolved by the Supreme Court. Clearly where the decision of each court was determined principally on the facts before it, the Supreme Court need not and indeed should not review the case. Further, it must be pointed out that even the difference in results in the two cases have been brought into harmony because the Van Buren Bank by following the Circuit Court's suggestion moved its main office to Marion, closed its old office for a few days and then reopened it as a branch. Thus the Marion case and the instant case are for all practical purposes in harmony both as to result and the law.

(2) Competitive Equality Argument

The principle of competitive equality which the Petitioners seek to apply in the instant case is not applicable. Once the Court has determined the bona fidedness of the application under 12 U.S.C. Section 30, the question of competitive equality drops out of the case. The principle of competitive equality only applies to those cases involving the creation of a branch and, therefore, if the court determines that the move of the main office is genuine and bona fide, then it need not consider the question of whether or not state and national banks are "competitively equal" insofar as the establishment of a main office is concerned. The Petitioners' "competitive equality" argument is actually an alternative argument. In other words, they are saying that even if the applica-

tions of Prospect Park National Bank are bona fide in all respects, the doctrine of "competitive equality" between state and national banks requires that Section 30 be read together with and limited by the provisions of Section 36 (c) 2. Their argument is that a national bank's relocation of its main office becomes subject to whatever limitations a state may impose on the relocation of a state bank's main office when such an application is accompanied with an application to retain a branch. The argument runs that even though 12 U.S.C. Section 30 does not provide that state limitations on location of a main office apply to a national bank, it must be inferred because it is only fair under the doctrine of "competitive equality" that it be inferred. The Petitioners seek authority for this position by relying on (a) principles of statutory construction, (b) legislative history and (c) the *Walker Bank* case and *Dickinson* case.

As to the Petitioners' reliance on the statutory construction principle of *pari materia* the Circuit Court said: ". . . the language and history of the two sections (Section 30 and 36) is clear and unambiguous, and it is quite obvious that the sections have independent statutory scope and purpose. Thus the statutory construction principle has no application here." (Pet. App. 22a)

In response to the Petitioners' reliance on congressional history the court said "It is clear, insofar as congressional history is concerned, that nothing in the language of Section 30 or in the commentary generated by its passage in 1886 and amended in 1959 permits the inference that state law was intended to govern the movement of national bank main offices. It is equally clear that when Congress enacted Section 36 (c) in 1927 and substantially amended it in 1933 nothing was said concerning the incorporation of state banking laws into Section 30." (Pet. App. 22a)

The Court finally disposed of the Petitioners' reliance on the *Walker Bank* case by stating that "It was conceded in Walker Bank that the activity in question constituted branching. The only question before the Court was the extent to which Section 36 (c) adopted state law restrictions on branching. The issue here (instant case) is whether Section 36 (c) was intended to adopt or to permit state law restrictions to govern the *non branching* functions of national banks. One searches in vain for evidence of such an intention in the clear language and congressional history of Section 36 (c)." (Pet. App. 23a).

In commenting on the *Dickinson* case the Court concurred with the observation of Mr. Chief Justice Burger that even in matters of branching Congress was quite specific as to which provisions of state law were to be incorporated. The fair implication from both the Circuit Court's remark as well as the observation of Mr. Chief Justice Burger is that the principle of "competitive equality" cannot be extended to situations other than those where Congress specifically said it should apply. This is further substantiated by a careful review of the cases cited in the *Walker* case as precedent for the establishment of the principle of "competitive equality". The thread running through all of the cases cited is that insofar as the day to day activities of a national bank are concerned, (pledge of assets, transfers in anticipation of insolvency, transfer of securities, escheat law), national banks should be competitively equal to state banks and that each bank should be able to do what the other bank does. These cases, however in no way limit the principle that state law cannot affect the corporate powers or privileges of a national bank unless Federal law incorporates the state law. Thus in the case of branching, Federal law specifically incorporates the restrictions

of state law. This was not done in the case of relocation of a national bank's main office. Where Congress has legislated upon a subject which is within its constitutional control and over which it has the right to assume exclusive jurisdiction and has manifested an intention to deal therewith in full any state legislation on the subject is void. The states have no right to interfere or by way of compliment to legislation of the Congress, proscribe additional regulations and what they deem auxiliary provisions for the same purpose. This principle was clearly established by Chief Justice Marshall in *McCulloch* v. *Maryland*, 4 Wheat. 316 (1819) and was most recently reaffirmed by the Supreme Court in *First Agricultural National Bank of Berkshire* v. *State Tax Commissioner*, 392 U. S. 339 (1968).

(3) Importance of the Case

Both the Petitioner Ramapo and the Petitioner Brady seek to create the impression with the Court that because of the decision of the court below, uncertainty has been injected into the state regulation of branch banking and there may now be motivation by state banks to convert to national banks.

The fact of the matter is that the decision below does not create any uncertainty in the law insofar as a national bank is concerned. The four cases which have considered the question, namely *Traverse City* case, the *Merchants and Miners* case, the *Marion* case and the instant case clearly lay down the principle that if an application is, under 12 U.S.C. § 30, bona fide, then state restrictions regarding branching do not apply and that if the application is not bona fide, but is a subterfuge to establish a branch which would not otherwise be allowed, then state branching restrictions do apply to a national bank.

The only uncertainty that exists is that which exists in the state law of New Jersey as to whether or not a state bank may move its main office to a neighboring community.

The respondent, Prospect Park National Bank, briefed this point in both the District and the Circuit Courts in response to the Petitioners argument of competitive equality. It was contended before these Courts that the New Jersey statutes did not clearly indicate that a state bank could not move its main office. It was conceded by the Respondent below that such a decision on New Jersey law was not necessary to the determination of the case. The Circuit Court apparently agreed with this contention and in footnote No. 34 (Pet. App. 21a) of its Opinion it stated: "It is not clear from the face of these sections that a state bank would be precluded from entering Wayne by moving its principal office." They further indicated that disposition of the case, however, made it unnecessary to resolve this issue.

The uncertainty as to the law, if indeed there is any, is in regard to state law and not federal law and the resolution of this problem is better left to the state courts.

As to the point raised by the Petitioners that the decisions below may result in many state banks converting to national banks, it must be pointed out that the facts in this case are extremely unique. Nearly every municipality in Passaic County, New Jersey, and for that matter, throughout the State, in which there is some chance for successful operation of a bank, already has the main office or a branch of a bank located therein. This is particularly so since the liberalized branching laws in the State of New Jersey were enacted. Thus, in the great majority of cases, although a national bank would be able

to move its main office pursuant to Section 30, it would not be able to retain its old office as a branch because to do so would violate the branching restrictions imposed by 12 U.S.C. Section 36 (c) 2. In the instant case, Prospect Park National Bank may establish a branch in Prospect Park because no other state or national bank is located in that community. In nearly every other municipality there is already a bank and, therefore, no branch could be established in such municipality.

If Ramapo were a national bank it might be conceivable that it could move its main office to some other municipality, but it could not establish a branch in Wayne because of the existence of other banks there. Similarly, if the Petitioner, Broadway, were a national bank, it could move its main office out of Paterson, but it could not retain a branch there because other banks are already established in Paterson.

The banks which can make applications similar to Prospect Park National Bank are extremely few in number. Such a bank must first be able to prove the bona fideness of its application and secondly must show that the establishment of a branch would be in accord with state restrictions. The Petitioners' fears that there will be a flood of applications similar to that filed by Prospect Park National Bank are without foundation in fact.

CONCLUSION

The Petitioners have had a full and complete review of all factual and legal determinations in the District Court and the Circuit Court below. Each finding of fact unequivocally stated that the applications were bona fide. The District Court and the Circuit Court reviewed all of the legal arguments now being advanced before this

court and clearly and concisely rejected each of the arguments and based their rejection on established principles of law. As set forth herein, the difference in the *Marion* case and the instant case was only one of result and not the application of established principles of law and even the result in each case has been brought into harmony because the Van Buren bank has indeed established its main office in Marion and retained its office in Van Buren as a branch. The Petitioners have failed to show that the crucial finding of bona fideness made by all of the tribunals below is incorrect and they have further failed to establish that the principles of law argued by them are applicable to the instant case. There is no warrant for a further review by this court.[5]

Respectfully submitted,

JEFFER, WALTER, TIERNEY, DEKORTE, HOPKINSON & VOGEL, ESQS.,
By: HERMAN JEFFER, ESQ.

[5] Prospect Park National Bank has relocated its main office in Wayne, New Jersey, and is presently operating in a temporary structure pending the completion of its new main office building, pictures and plans of which were submitted with the applications.